ARTICLE 19

Uzbekistan: Law on Mass Media

February 2019

Legal analysis

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ARTICLE 19 would appreciate receiving a copy of any materials in which information from this report is used.

Executive summary

In February 2019, ARTICLE 19 analysed the Law on Mass Media (Mass Media Law), adopted by the Uzbekistan Government in January 2007, and subsequently amended in April 2018, for its compliance with international freedom of expression standards.

ARTICLE 19 welcomes the stated commitment of the Uzbekistan Government to improve its poor human rights record, since President Shavkat Mirziyoyev took power in December 2016, including reforming legislation that contravenes international human rights standards. We call on the Uzbekistan Government to undertake an urgent review of all freedom of expression related legislation and ensure it is duly amended. We believe that the review of the Mass Media Law must be assessed and amended as a key part of these reforms.

In the analysis, ARTICLE 19 finds that the Mass Media Law contains some positive features, such as providing for the protection of media freedom, protection of sources and the right of access to information. At the same time, overall, the Mass Media Law fails to adequately protect and promote the right to freedom of expression as provided for under international law. For one thing, the Mass Media Law attempts to regulate in a single set of broad provisions all aspects and fields of mass media even though very different regimes are needed to regulate, for example, the broadcast media and the print and Internet based media. Other fundamental difficulties include onerous content restrictions which impose an overbroad obligation on the mass media to publish corrections or responses; and provisions which give state authorities power to command the publication of certain materials.

ARTICLE 19 urges the Uzbekistan Government to either repeal or significantly revise the Mass Media Law. We also offer support to all stakeholders in Uzbekistan to assist in the reforms to improve the protection of freedom of expression and information in the country.

Summary of recommendations

- Uzbekistan should undertake a comprehensive assessment of its legislation related to freedom of expression and ensure that all legislation fully complies with them. The legislation should ensure that any restrictions on freedom of expression should strictly meet the three-part test under international human rights standards;

- Uzbekistan should also ensure that the country's justice system is fully independent and adequately resourced to protect human rights of all in the country. They should be able to interpret all legislation in compliance with international freedom of expression and human rights standards. Such a provision should already be part of domestic law;

- To the extent that the Mass Media Law is retained, it should declare that its objective is to promote freedom of expression and information. In particular, it should state that its aim is to provide freedom of media in accordance with the right to freedom of expression. The Law should explicitly recognise that the main mission of the media is to report the news and to act as a public watchdog of government; and require that state bodies always use the least restrictive means of action when their bodies interfere with the exercise of the right to freedom of expression. Positive aspects of the Media Law should be retained and properly enforced in practice, in particular prohibition of censorship and provision of media freedoms;

- Any media related legislation should distinguish between print and Internet-based media on the one hand, and broadcast media on the other, with regulation only specified in relation to broadcast media. Definition of the mass media in Article 4 and in connection to Article 21 should be amended;

- The Mass Media Law should not contain any content restrictions whatsoever. If the publication of a certain category of statement carries a sufficient risk of harm to justify a restriction on freedom of expression, this should apply regardless of the manner in which the statement is disseminated. As a result, the restriction should be placed in a law of general application. Article 6 of the Mass Media Law should be omitted.

- Article 8 of the Mass Media Law should be amended to make it clear that everyone has the right to publish, in association with any group or individual of their choice;

- The provisions on organising activities of the mass media in Chapter 2 should be repealed. If the need for a limited and purely technical registration regime can be demonstrated, then its substantive elements should be based on the principles outlined in this analysis;

- Chapter 3 of the Mass Media Law and Articles 25-29 and Article 31 and Article 35 should be repealed in their entirety;

- The provisions of the Mass Media Law on media concentration should be carefully examined and expanded in light of available international and regional standards in this area;

- The rule on protection of confidentiality of sources should be cast as a right, not an obligation. It should apply to everyone regularly engaged in the professional or regular dissemination of information. The Mass Media Law should ensure that any restrictions on confidentiality of sources should comply with international freedom of expression standards;

- The right to reply and correction should ideally be dealt with by self-regulatory mechanisms, not by the Mass Media Law. Alternatively, provisions should be made to allow for refusal to publish a "correction" and provisions on the right should be clarified. The rights of reply and correction should be separated and restricted. In particular, a right to reply should not be available where the publication of the statement was justified by an overriding legitimate public interest;

- Uzbekistan should adopt a comprehensive freedom of information law. Alternatively, the Mass Media Law should be amended to provide that everyone has the right of access to information. Any restrictions on access to information should meet the requirements of international standards;

- The Mass Media Law should ensure that accreditation is required only if due to limited space all interested journalists cannot attend a meeting or follow the activities of a particular body. It should provide safeguards against arbitrary refusals of accreditation, such as clear accreditation rules. The accreditation should be overseen by an independent body, such as a journalists' union. There should be a right to appeal refusals for accreditations to court.

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Introduction

In February 2019, ARTICLE 19 analysed the Law on Mass Media (the Mass Media Law) for its compliance with international freedom of expression standards. The Mass Media Law was adopted by the Uzbekistan Government on January 2007[1] and amended in April 2018.[2]

Although ARTICLE 19 appreciates a number of positive features of the Law, we note that the provisions of the Law need to be assessed in the context of consistent restrictions of the right to freedom of expression and human rights in general in the country. While the Uzbekistan constitution provides for freedoms of expression and the press,[3] the Uzbekistan Government shows little respect for the rule of law in practice. Although the Government committed to some democratic reforms recently, and released some political prisoners, including journalists, the country has one of the most problematic human rights records in the world.[4] Despite legal and constitutional provisions on prohibition of censorship, a number of reports clearly demonstrate a discrepancy between law and reality.[5] The Law therefore needs to be read in the context of the actual human rights situation in the country. It should also be read in conjunction with associated legislation, in particular the 1997 Law on the Protection of Professional Activity of Journalists (as also amended in April 2018)[6] and analysed by ARTICLE 19, and relevant presidential decrees, such as the Decree on Regulating Foreign Media (amended March 2018).[7] The associated legislation is also problematic as it fails to comply with international freedom of expression standards.

We welcome the stated commitment of the Uzbekistan Government to improve its poor human rights record. At the same time, we are concerned about the slow

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[1] The Law on Mass Media, No 3RU-78, available (in Russian) at https://bit.ly/2SmhdTm. This analysis is produced on the basis of unofficial translation of the Mass Media Law into English. ARTICLE 19 takes no responsibility for the accuracy of these translations or for comments based on mistaken or misleading translation.

[2] The April 2018 amendments to the Mass Media Law, available (in Russian) at https://bit.ly/2VdbRfa.

[3] Freedom House, Freedom of Press: Uzbekistan, 2017.

[4] Human Rights Watch, Censorship Still Alive and Well in Uzbekistan, 13 December 2017.

[5] See Human Rights Watch, Report on Uzbekistan, 1997.

[6] The Law on the Protection of Professional Activity of Journalists, No 402-I of 24 April 1997, amended April 2018; available at http://lex.uz/acts/2024

[7] Decree on Regulating Foreign Media, February 2006, available at http://www.lex.uz/docs/973661; the 2018 Amendments are available at https://bit.ly/2GDZmGg.

progress of these reforms and the scope in which stated commitments translate to real protections in practice.[8] We therefore call on the Uzbekistan Government to undertake an urgent review of all freedom of expression related legislation and ensure it is duly amended. We believe that the review of the Mass Media Law must be assessed and amended as a key part of these reforms.

In this analysis, ARTICLE 19 highlights the concerns and conflicts of the key provisions of the Mass Media Law with international human rights standards; we also actively seek to offer constructive recommendations on how the Law can be amended. We explain the ways in which problematic provisions in the Law can be made compatible with international standards on freedom of expression and set out key recommendations.

ARTICLE 19 hopes that this analysis will be useful to the Uzbekistan Government, legislators, media, civil society and other stakeholders in the process of ongoing reforms and in making sure that freedom of expression and media freedom are fully safeguarded in the country.

[8] See e.g. Human Rights Watch, Media Freedom in Uzbekistan: Still a Long Way to Go, 27 March 2018; or Human Rights Watch, US Congress: Hearing on Developments in Central Asia, Testimony of Steve Swerdlow Before the House Foreign Affairs Subcommittee on Europe, Eurasia, and Emerging Threats 18, July 2018.

International human rights standards

The protection of freedom of expression under international law

The right to freedom of expression and freedom of information is a fundamental human right. The full enjoyment of this right is central to achieving individual freedoms and to developing democracy, particularly in countries transitioning from autocracy to democracy. Freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights.

The Mass Media Law engages a number of international human rights provisions that form the basis of the legal analysis in the following section. This section identifies those international human rights provisions that are most relevant to the protection of freedom of expression and in particular the broadcasting regulations.

The **Universal Declaration of Human Rights** (UDHR)[9] is generally considered to be the flagship statement of international human rights standards, binding on all States as a matter of customary international law. Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

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

The **International Covenant on Civil and Political Rights** (ICCPR) is an international treaty, ratified by Uzbekistan in August 1995, which imposes legally binding obligations on State Parties to respect a number of the human rights set out in the UDHR.[10] Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found in Article 19 of the UDHR. Having ratified the ICCPR, Uzbekistan is not only bound as a matter of international law by the provisions of the ICCPR, but is also obliged to give effect to that treaty through national legislation.

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[9] Adopted by the United Nations General Assembly on 10 December 1948, Resolution 217A(III).

[10] United Nations General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

Freedom of expression is also guaranteed in various documents of the Organisation for Security and Cooperation in Europe (OSCE) agreed to by Uzbekistan, such as the Helsinki Final Act,[11] the Final Document of the Copenhagen meeting of the human dimension of the OSCE,[12] the Charter of Paris agreed in 1990,[13] the Final Document of the 1994 Budapest CSCE Summit,[14] and the Istanbul Summit Declaration.[15]

Similar guarantees for the right to freedom of expression are provided by Article 9 of the African Charter on Human and Peoples' Rights (African Charter),[16] Article 13 of the American Convention on Human Rights[17] and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).[18] Although the decisions and authoritative statements adopted by regional human rights bodies are not binding on Uzbekistan, they provide persuasive precedents for the scope and implications of the right to freedom of expression. They are important comparative evidence of the content and application of the right to freedom of expression and may be used to inform the interpretation of Article 19 of the ICCPR, which is binding on Uzbekistan.

Limitations on the right to freedom of expression

Under international standards, restrictions on the right to freedom of expression must meet the conditions of so called "three-part test" which mandates that restrictions must be:

- **Provided for by law**; any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;

- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals;

[11] OSCE, Helsinki, 1 August 1975.

[12] Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990; see in particular paras 9.1 and 10.1.

[13] Charter of Paris for a new Europe, CSCE Summit, November 1990.

[14] Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paras 36-38

[15] OSCE Istanbul Summit, 1999, para 27; see also para 26 of the Charter for European Security adopted at the same meeting.

[16] Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on 21 October 1986.

[17] Adopted 22 November 1969, in force 18 July 1978.

[18] Adopted 4 November 1950, in force 3 September 1953.

– **Necessary and proportionate in a democratic society**, i.e. if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied.[19]

Additionally, Article 20(2) of the ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law. At the same time, inciting violence is more than just expressing views that people disapprove of or find offensive.[20] At the international level, the Office of the High Commissioner for Human Rights (OHCHR) within the United Nations (UN) has developed the Rabat Plan of Action which provides the closest definition of what constitutes incitement law under Article 20(2) ICCPR.[21]

Media regulation

The guarantee of freedom of expression applies with particular force to the media. International human rights bodies have repeatedly emphasised the "pre-eminent role of the press in a State governed by the rule of law"[22] and the essential role of the press in a democratic society.[23]

Regulation of the media presents particular problems. On the one hand, the right to freedom of expression requires that the government refrain from interference, while on the other hand, Article 2 of the ICCPR places an obligation on states to "adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant." This means that states are required also to take positive steps to ensure that rights, including the right to freedom of expression, are respected.

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently of government control. This ensures the media's role as public watchdog and that the public has access to a wide range of

[19] UN Human Rights Committee, *Velichkin vs Belarus*, Comm. No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

[20] C.f. the European Court for Human Rights (the European Court), *Handyside vs the UK*, 6 July 1976, para 56.

[21] See OHCHR, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 2012. In particular, it clarifies that regard should be had to six part test in assessing whether speech should be criminalised by states as incitement.

[22] See, e.g. European Court, *Thorgeirson vs Iceland*, 25 June 1992, para 63 or *Castells vs Spain*, 24 April 1992, para 43.

[23] European Court, *Dichand and others vs Austria*, 26 February 2002, para 40.

opinions, especially on matters of public interest. This has important implications for regulatory models of the media:

- Self-regulation is the preferred model of regulation for print and Internet-based media, which means that it should be left to the industry to develop and hold itself accountable for ethical media standards. This is often achieved through the establishment of Press Councils that are independent from the State, and open to all print media to join as members. The mandates of Press Councils vary, but they are generally tasked with formulating professional and ethical standards, and with receiving complaints regarding compliance with those standards.

- The regulation of broadcast media, i.e. radio and television, should be established separately. This is because the broadcasting spectrum is a limited public resource, and the state has an important, albeit limited, role to play in ensuring that the spectrum is used in the public interest for diverse and plural programming. Ensuring diverse and plural broadcast programming while safeguarding media independence is a complex task. It requires the state to establish an independent, transparent and accountable regulatory body to ensure broadcast frequencies are allocated fairly, according to a transparent broadcast policy designed to maximise media pluralism and diversity. Unlike the print and Internet media, this body is not self-regulatory but is independent from the industry, as well as the state and political parties.

Constitution of Uzbekistan

Uzbekistan ratified the International Covenant on Civil and Political Rights in August 1995. The Constitution of Uzbekistan[24] (adopted in December 1992) proclaims its "dedication to human rights," "devotion to the ideals of democracy" and "the building of a democratic and just state," and recognises "the priority and importance of the generally recognised standards of international law."

According to Article 29 of the Constitution of the Republic of Uzbekistan, "everyone has the right to seek, acquire and disseminate any information;" but this right is restricted, if it is directed against the existing constitutional structure. Freedom of opinions and of expressing them can be restricted by the law for reasons of state and other secrecy. Article 67 of the Constitution further provides that "the mass media are free and act in conformity with the law. They bear liability under the established procedure for the truth of information. Censorship is not permitted."

[24] Constitution of the Republic of Uzbekistan, available at https://bit.ly/2VfLbKN.

Analysis of the Mass Media Law

General observations

At the outset of this brief, ARTICLE 19 wishes to point out that it tends to view laws that regulate all the media (both press and broadcast media and the Internet based media) in one piece of legislation with caution as they are often a tool for governments to excessively restrict, rather than protect, the right to freedom of expression and information. Most democracies do not have a specific media law (with exception of the regulation of audio-visual media), in particular the laws that deal with establishing and operating the media outlets. These are viewed as ordinary commercial activities that should not be regulated separately but through laws of general application, such as the civil and commercial codes. The procedure to establish media press outlets is the same as for any comparable business. This does not mean that there are no restrictions at all on what the press can publish. For example, prohibitions on content that incites to violence or discrimination, sexually exploits minors or infringes a trademark can be found in virtually every country. But in democracies, these rules are usually found in laws of general application rather than in specific legislation. Given the instrumental importance of the press in a democratic society, it stands to reason that journalists and their publications should not be subject to greater restrictions on the right to express themselves than ordinary people.

The adoption of the Mass Media Law is not inherently problematic. ARTICLE 19 also notes that it contains some positive features, such as guarantees to the freedom of media, access to information, protection from arbitrary decisions or prohibitions of interference with the activities of the mass media (Article 5 of the Mass Media Law) as well as commitment of the state to provide support to the media (in Article 5[1] of the Mass Media Law, added through the April 2018 amendments). However, legislation of this kind does raise the question on whether its purpose and effect is to guarantee the media freedom and to strengthen freedom of expression or rather to create additional mechanisms to control the media, over and above the general laws applicable to any individual or business.

ARTICLE 19 believes that a careful consideration should therefore be given to simply abolishing, or at a minimum, greatly reducing the scope of the Mass Media Law. We believe that this is entirely feasible since the print media would by no means be placed in a legal vacuum. The examples of some countries in Eastern Europe, like the Czech Republic, Slovakia, Hungary, Romania and Bulgaria show that even young democracies with an immature free media do not need a similar law as the Mass Media Law.

Hence, the *raison d'être* of the Law should be reconsidered. As noted earlier, Uzbekistan should undertake an urgent and comprehensive review of its freedom of expression

related legislation and bring it to full compliance with international human rights standards. A review of the Mass Media Law should be a part of such a review.

Recommendations:

- Uzbekistan should undertake a comprehensive assessment of its legislation related to freedom of expression and ensure that all legislation fully complies with them. The legislation should ensure that any restrictions on freedom of expression should strictly meet the three-part test under the international human rights standards.

Objective and application of the Mass Media Law

In the present form, the objective of the Mass Media Law is unclear.

Article 1 stipulates that it aims to “regulate the sphere pertaining to the activities of the mass media;” and Article 2 outlines that it is applicable to “newly established and active mass media outlets operating on the territory of [Uzbekistan]; as well as to the mass media of foreign states insofar as they distribute materials produced by them” in Uzbekistan. Article 5 (including April 2018 amendments) outlines a number of positive guarantees to media freedom and Article 5^1 (added through the April 2018 amendments) lists various commitments of the state to provide support to the mass media, including through tax exemptions;[25] Article 3 also provides for precedence of international treaties over the domestic legislation. Article 7 prohibits censorship.

While ARTICLE 19 appreciates the positive commitments to media freedoms and support to the media, we note with concern that the Mass Media Law omits important guarantees to freedom of expression while regulating a wide range of media matters, including the registration of media organisations. As highlighted in the previous section, these matters are typically regulated by general laws on businesses (such as civil, commercial or administrative codes); or as far as the press is concerned, are left for self-regulation.

Recommendations:

- To the extent that the Mass Media Law is retained, it should declare – for example in Article 1 – that its objective is to promote freedom of expression and information. In particular, it should state that its aim is to provide freedom of media in accordance with the right to freedom of expression. The Law should explicitly recognise that the main mission of the media is to report the news and to act as a public watchdog of government; and require that state bodies always use the least restrictive means of action when their bodies interfere with the exercise of the right to freedom of expression;

[25] It should be noted that in practice, ‘support’ is only provided to those media outlets that are not critical of the Government; hence can be used as an instrument of media control.

– Positive aspects of the Media Law should be retained and properly enforced in practice, in particular prohibition of censorship and media freedoms.

Definition of "mass media"

Article 4 defines the term "mass media;" this definition was expanded through the April 2018 amendments to refer to "duly registered" forms of media and "websites on the global information network, the Internet." This definition, in connection to Article 27[1] (a new article introduced through the April 2018 amendments dealing with mass media outlets in the form of "a website on the Internet"), covers virtually every conceivable communication of information, including print media and broadcast media, provided only that such communication has a "permanent title." For example, "electronic and digital communication" would appear to include within its reach any form of Internet conveyance of information whatsoever as long as it has some sort of caption which could be counted as a "title."

ARTICLE 19 finds this attempt to regulate all mass media in a single instrument inappropriate. We recall that the UN Human Rights Committee has underlined that "regulatory systems should take into account the differences between the print and broadcast sectors and the internet."[26]

We reiterate that it is generally recognised that regulation of the broadcast media is legitimate,[27] principally because broadcasting frequencies are scarce, and without a mechanism to parcel the frequency spectrum out, chaos would result with competing users drowning each other out. A secondary reason is that TV and radio penetrate personal living spaces in a very direct manner, increasing the justification for certain controls on content, for example to protect minors or ensure that a wide range of viewpoints is available.

However, the arguments that justify regulation and licensing of broadcasters are far less relevant to the print media; there are no technical limits to the number of publications that can exist concurrently, and newspapers and magazines are not as pervasive as the broadcast media. Consequently, most democracies either do not prescribe any formalities for the establishment of a print media outlet (beyond the ordinary requirements for the establishment of a business), or impose a purely administrative requirement to register, with no discretion to refuse or terminate registration once the required details (e.g. the place of business and identity of the owners) have been provided.

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26 Human Rights Committee, General Comment No. 34 on Article 19 of the ICCPR (Freedoms of opinion and expression), adopted 12 September 2011, UN Doc. CCPR/C/GC/34, para 39.

27 For example, Article 10(1) of the European Convention guarantees the right to freedom of expression, and then goes on to state that "[t]his article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

There is a wealth of authority to the effect that a licensing requirement for print media violates international law. For example, the African Commission on Human and Peoples' Rights (ACHPR) has ruled that a Nigerian decree which made it an offence to own, publish or print a newspaper without registering violated the right to freedom of expression under the *African Charter on Human and Peoples' Rights*. The Commission found that the requirement to register was not necessarily problematic in itself, nor was the requirement to pay a modest registration fee, but:

> **Of more concern is the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they choose. This invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9.1. There has thus been a violation of Article 9.1.**[28]

Similarly, the Human Rights Committee has stated that the "unfettered discretionary power to grant or to refuse registration to a newspaper" under Lesotho's Printing and Publishing Act placed that country in contravention of Article 19 of the ICCPR on freedom of expression.[29]

Much of the same considerations apply to Internet media as to the press. Democracies do not require operators of websites and other online services to be registered and impose the requirements on how the websites should look like or minimum information they should contain. In 2011, the Representative for the Media Freedom of the OSCE, along with her counterparts from the UN, Africa and the Americas, adopted a Joint Declaration stating that even registration requirements for providers of online services are generally not legitimate:

> **Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.**[30]

The key parts of the Mass Media Law should be reconsidered in the light of these standards. If the Law is retained, the end result should be the legislation that fully protects freedom of expression, and contains only such regulations and restrictions as are clearly worded, pursue a legitimate aim; and are truly "necessary in a democratic society."

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[28] Human Rights Committee, *Media Rights Agenda and Others vs Nigeria*, Comm. Nos. 105/93, 128/94, 130/94 and 152/96, Recommendation of 31 October 1998.

[29] Human Rights Committee, Concluding Observations on Lesotho, 8 April 1999, UN Doc. No. CCPR/C/79/Add.106, para 23.

[30] Joint Declaration on Freedom of Expression and the Internet, 1 June 2011, para 6(d).

From a comparison perspective, the Georgian Law on Freedom of Speech and Expression may be taken as an example of such protection.[31] This innovative and progressive law includes a broad definition of freedom of expression, stipulates the importance of free and open debate, prohibits censorship and incorporates human rights jurisprudence into domestic legislation. The Georgian Law also sets very strict standards for restrictions on freedom of expression, akin to those developed under the ICCPR, provides specific rules on confidentiality, including the principle of journalistic confidentiality, and devises a new and progressive legislative scheme for defamation. In tandem with the introduction of the Georgia Law, criminal defamation was abolished – a step we would urge the Uzbekistan authorities to follow.

Recommendations:

- Any media related legislation should distinguish between print and Internet-based media on the one hand, and broadcast media on the other, with regulation only specified in relation to broadcast media. Definition of the mass media in Article 4 and in connection to Article 21 should be amended;
- Instead of having statutory systems for dealing with content imposed on them, the media in Uzbekistan should be given an opportunity to develop a self-regulatory system that can also provide specific codes of ethics.

Prohibition to misuse the freedom of the media

Article 6 (the provisions on "misuse" of media freedom, unchanged through the April 2018 amendments) outlines a number of content restrictions. It prohibits inter alia the following:

- Calls for the violent dismantling of the constitutional form of government and territorial integrity of the Republic of Uzbekistan;
- Propaganda of war, violence and terrorism as well as ideas of religious extremism, separatism and fundamentalism;
- Disclosing information classified as a state secret or other legally protected secret;
- Distribution of information, aimed at stirring up national, racial, ethnic or religious enmity;
- Promotion of narcotic drugs, psychoactive substances and precursors, unless otherwise determined by the law;
- Promotion of pornography;
- Other activities, entailing criminal or other liability according to the law;
- Use of the media to discredit the honour and dignity or business reputation of citizens, to intrude on their privacy;
- Publishing records of inquiries or preliminary investigations without written permission of the prosecutor, the investigator or interrogating officer, to anticipate

[31] Law of Georgia On Freedom of Speech and Expression, adopted on 24 June 2002.

results of a specific case before a court decision is made or in any other way influence the court before the entry of its decision into legal force.

ARTICLE 19 makes two key comments in this area:

- First, we question whether it is necessary to include any content restrictions in the Mass Media Law at all. It would seem more appropriate to provide content restrictions in laws of general applications. Some of the content restrictions presumably duplicate existing prohibitions already found in the civil or criminal law, or create subtle variations on existing prohibitions. For example, existing provisions already restrict publication of incitement to hatred.[32] Repeating or slightly varying these provisions in the Mass Media Law creates a confusing legal situation whereby two sets of rules are applicable to the same offence. An outcome that should be avoided is that the media become subject to overlapping and potentially contradictory content restrictions spread across different laws. It also sends a signal to the media that they are being singled out for special scrutiny, which is likely to have an illegitimate chilling effect on their right to freedom of expression. For this reason, the OSCE, UN and OAS special mandates on freedom of expression have stated that "media-specific laws should not duplicate content restrictions already provided for in law as this is unnecessary and may lead to abuse."[33]

- Second, apart from the question of whether the Mass Media Law is the right place to incorporate these provisions, ARTICLE 19 is concerned that all of the content restrictions of Article 6 are too vague and broadly worded and are open to abuse for political purposes. While freedom of expression is not an absolute right, we recall that restrictions on it must pass the three-part test described in the earlier section of this analysis. Vague and broadly worded restrictions constitute an illegitimate interference with the right to freedom of expression. It is also important that restrictions are not themselves stated in absolute terms which strike at the heart of the right to freedom of expression. Many of the restrictions in the Law fail these international law tests. To give just a few examples:

  - Disclosing information "classified as state secret or other legally protected secret" should allow for publication of these materials when it is in the public interest, for example because they reveal corruption;

[32] The Criminal Code of the Republic of Uzbekistan, 1994: Article 156 and the Resolution of the Cabinet of Ministers of Uzbekistan: On preparation and distribution of information resources of the Republic of Uzbekistan through data networks, including the Internet, 1999: Article 16.2

[33] The 2003 Joint Declaration, the UN Special Rapporteur on Freedom of Expression, the OAS Special Rapporteur on Freedom of Expression and the OSCE Special Representative on Freedom of the Media, 18 December 2003.

- Similarly, “discrediting honour” of others is unclear as these provisions could be misused to restrict criticism of public officials. We note that this is already the case with problematic provisions of Article 158 of Uzbekistan’s Criminal Code[34] which provides for up to five years’ imprisonment for “public insult or defamation of the President of the Republic of Uzbekistan” in violation of international freedom of expression standards;

- Additionally, “intruding on the privacy” of citizens is not defined specifically and may be used to protect public officials from disclosure of details about their income, property ownership, spending and other issues that are of public interest.

- Other restrictions, such as the prohibition on war propaganda, do pursue a legitimate aim but are broadly phrased and as such open to abuse.

It is impossible to foresee to a reasonable degree what is prohibited and what is not. This is likely to have a “chilling effect” – the media will be discouraged from publishing materials that are actually legitimate, out of uncertainty whether or not one of the content restrictions of Article 6 applies. We recommend, therefore, that all restrictions in Article 6 of the Media Law are reviewed for compliance with international law standards on freedom of expression. To the extent that they are legitimate and necessary, they should be moved to legislation of general application.

Recommendations:

- The Mass Media Law should not contain any content restrictions whatsoever. If the publication of a certain category of statement carries a sufficient risk of harm to justify a restriction on freedom of expression, this should apply regardless of the manner in which the statement is disseminated. As a result, the restriction should be placed in a law of general application. Article 6 of the Mass Media Law should be omitted.

Organising activities of the mass media

Chapter 2 of the Media Law, unchanged by the April 2018 amendments with exception of Article 18, outlines procedures for establishing the media outlets, and details inter alia of what should be contained in Charter documents, founding agreements and provides further details on what the composition of the editorial board, functions of the editorial staff, and the content of the masthead of the media outlet should be.

Some of the provisions are not very clear. For example, it is not clear if the right to establish a media outlet is limited to the citizens of Uzbekistan (Article 8 states that they can be

[34] The Criminal Code of the Republic of Uzbekistan, 1994: Article 158

established by “legal entities and private individuals of the Republic of Uzbekistan”) or to what extent they restrict the rights of certain entities to set-up media outlets (e.g. non-profit organisations).

If the “individuals of the Republic of Uzbekistan” are indeed the citizens, ARTICLE 19 seriously questions such limitation. We recall that Article 19 of the UDHR and the ICCPR applies to everyone, not just to citizens. Equally importantly, Article 2 of the ICCPR requires States to ensure respect for the rights guaranteed by it for all persons “within its territory and subject to its jurisdiction,” without distinction of any kind, including on the basis of national origin. This would, therefore, apply to every person physically on the territory of Uzbekistan, as well as to persons under its jurisdiction, for example on a State-owned vessel or on territory under the effective control of the state although not belonging to it. The limitation to “citizens” would deprive non-nationals such as refugees or stateless persons of the right to publish – something that cannot be justified under international law.

Similarly, ARTICLE 19 questions whether it is appropriate to ban non-governmental non-profit organisations which have been banned by law from establishing their own media outlets. It is not clear which NGOs can be banned by law and if these provisions could be abused to prevent civil society to inform the public about particular subjects in the community.

Recommendations:

- Article 8 of the Mass Media Law should be amended to make it clear that everyone has the right to publish, in association with any group or individual of their choice.
- The provisions on organizing activities of the mass media in Chapter 2 are unnecessary and should be repealed. If the need for a limited and purely technical registration regime can be demonstrated, then its substantive elements should be based on the principles outlined in this analysis.

State registration of media outlets

The registration scheme under Chapter 3 of the Mass Media Law (including changes introduced through the April 2018 amendments) is highly questionable. The Chapter sets out that state registration is implemented by the registration authority under the procedures determined by the Cabinet of the Ministers of Uzbekistan (Article 19). It also sets out the requirements of applications for registration, including to register Internet websites. The Chapter specifies that the registration is not required in some instances (for example, for those media with circulation lower than 100 copies for “private needs”).

Furthermore, under Article 22,[35] registration can be denied in various instances, including "when scope and goals of the media outlet are contrary to the law" or "if information in the application is untrue." There is a possibility to challenge the decision in the court. Article 23 (unchanged through the April 18 amendments) also outlines the process for "invalidation of the registration certificate" and Article 24 outlines the process for "suspension or termination of the activities of the mass media" (changed through the April 18 amendments to include notification of suspension by electronic means).

ARTICLE 19 makes several observations on these provisions:

- We recall that licensing requirements for print media are considered illegitimate under international standards, as they impose a barrier to the exercise of freedom of expression which is not strictly necessary. As a result, registration of the print media is not required in many countries; beyond general companies law.[36] Even a registration requirement (a mere notification to the authorities of the establishment of a new publication), is increasingly viewed as unjustified. By contrast, international law permits governments to licence broadcasters, recognising that the supply of broadcasting frequencies is limited and that a mechanism is necessary to allocate them across different operators, in order to create a diverse and pluralistic broadcasting landscape.

- As for the registration of websites, we note that the Internet may be seen as occupying an intermediate position between the print media and broadcasting. In common with broadcasting, every operator on the Internet requires the use of one or more unique addresses, similar to the frequencies of a radio or television station. But similarly to print media, there are no limits to the numbers of Internet websites that can exist alongside each other. The supply of potential website addresses is infinite, while the number of potential broadcasting frequencies is not. Hence, ARTICLE 19 believes that given the unlimited availability of addresses, there is no justification for requirement of websites/Internet based media registration. The Special Rapporteurs on freedom of expression confirmed this position in their 2005 Joint Declaration where they stated that

  > **No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting. This does not apply to registration with a domain name authority for purely technical**

[35] Article 22 amended in April 2018 to state that media outlets denied registration should be informed within a day of the decision being taken (within 10 days in the previous version), indicating reasons for the denial and the time limit for resubmission (no appeal provided for in the previous version)

[36] For example, in Australia, Canada, Germany, the Netherlands, Norway and the United States.

reasons or rules of general application which apply without distinction to any kind of commercial operation.[37]

They also stated that the body responsible for allocating website addresses should be independent of government and other interests. Furthermore, in his May 2011 report, the UN Special Rapporteur on Freedom of Expression has also explicitly said that licensing and registration requirements "cannot be justified in the case of the Internet."[38]

- We note that the registration regime under the Mass Media Law applies to small publications (unless their distribution is lower than 100 copies) which raises serious questions about its legitimacy. We recall that in *Laptsevich v. Belarus*,[39] the Human Rights Committee held that the imposition of a registration regime on small publications constituted a violation of their right to freedom of expression, stating that "by imposing these requirements on a leaflet with a print run as low as 200, the State party has established such obstacles as to restrict the author's freedom to impart information."[40] In that case, the respondent State did not provide any justification for the regime.

- We question why it would be necessary to submit information regarding the outlet's "scope and objectives," or various information about the editorial board. The requirement that a mass medium's "scope and objective" be identified in the registration application provides the possibility of content-based discrimination in granting or declining to registration. The fact that the regime will be administered by an unspecified registration authority under the process set by the Government (the Cabinet of Ministers) also raises serious concern in this regard.

- We are extremely concerned about the possibility to deny request for registration. Under international law, purely technical registration requirements may not, per se, breach the guarantee of freedom of expression as long as they meet the following conditions:

  - There is no discretion to refuse registration, once the requisite information has been provided;

  - The system does not impose substantive conditions upon the print media;

[37] The Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 28 December 2005.

[38] Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, 16 May 2011, para 27.

[39] Human Rights Committee, *Laptsevich vs Belarus*, Comm. No. 780/1997, 20 March 2000.

[40] *Ibid.*, para 8.1.

- The system is not excessively onerous; and
- The system is administered by a body which is independent of government.[41]

The provisions of Articles 22 and 23 do not meet these criteria.

- Similarly, the provisions on invalidation, termination or suspension of registration do not meet international freedom of expression standards. It is reassuring that at the very least, the Mass Media Law does not provide a mechanism whereby the State can terminate or suspend a registration without any possibility of judicial review. At the same time, the procedure outlined in the Mass Media Law provides considerable potential for misuse and abuse of the ability to suspend or terminate a registration so as to muzzle the independent media. We recall that the closure of a media outlet is an extreme measure which we do not believe can ever be legitimately imposed on a print media outlet (only broadcasting activity may be regulated more strictly). Suspension is the most serious penalty that can be imposed on a media outlet, second only to an outright ban. Given the timeliness of news, even a brief suspension seriously affects the operations and credibility of a media outlet. ARTICLE 19 is of the view that the print media should never be subject to suspension.[42]

ARTICLE 19 therefore recommends that the print media and Internet based media (including websites) should not be required to register. As the Human Rights Committee has noted: "Effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression." [43]

Recommendations:

- Chapter 3 of the Mass Media Law should be removed.

Distribution of content

Chapter 4 of the Mass Media Law contains various provisions on the means of distribution of media products, including websites (Articles 25-27[1]), as well as provisions on advance and statutory copies (Article 29). It stipulates that the Cabinet of Ministers will develop a list of agencies and institutions to be included into the mailing list of statutory copies of print publications. Article 31 then sets the conditions for distribution of the media products of foreign media.

[41] The 2003 Joint Declaration, *op.cit.*

[42] See e.g. the European Court, *The Observer and Guardian vs the UK*, App. No. 13585/88, 26 November 1991.

[43] General Comment 10(1) in Report of the Human Rights Committee (1983) 38 GAOR, Supp. No. 40, UN Doc. A/38/40.

ARTICLE 19 notes that there is no need for the legislation to specify how media content should be distributed or to impose conditions on statutory copies in a democratic society. We note that the requirement to deposit publications is usually connected to the aim of creating libraries, for example, which might be justified by reference to archive interests. As well as presenting a significant administrative burden, there is a danger that such a requirement will be used as a vehicle for censorship. Such a concern is particularly pronounced in this case, since it is entirely unclear what purpose the Cabinet of Ministers have in determining which authorities should receive statutory copies. If there is a need for creation of certain archives, we propose that free copies of print media outlets can be required only to be sent to the National Library in view of its responsibility to protect the national cultural heritage. This is the standard practice around the world.

Recommendations:

- Articles 25-29 and Article 31 should be repealed.

Prohibition of the market monopoly

Article 30 of the Mass Media Law (unchanged through the April 2018 amendments) prohibits "monopolisation of the mass media market." It stipulates that neither specific legal entities nor private individuals have the right to be a founder (co-founder) and/or to own, use, dispose of or manage (directly or through affiliated persons) over 25% of the mass media outlets distributed on the central or local mass media markets accordingly.

ARTICLE 19 observes that media pluralism and diversity are key elements of the right to freedom of expression. States are obliged to take positive measures to prevent undue concentration of ownership that would threaten pluralism and diversity.[44] Such positive measures include anti-monopoly rules to prevent undue concentration of media or cross-media ownership, both horizontal and vertical; and should "involve stringent requirements of transparency of media ownership at all levels."[45] There are other comparative standards developed by the Council of Europe requiring that "rules should be adapted to the size and the specific characteristics of the national, regional or local audio-visual media and/or text-based media market to which they would be applicable."[46] It also outlines a number of specific provisions on media transparency and identifies five key categories of information that should be available to the public,

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[44] See e.g. Human Rights Committee, General Comment No. 10: Freedom of expression (Article. 19), 29 June 1983, para 2.

[45] The 2007 Joint Declaration on Diversity in Broadcasting of special international mandates for the protection of freedom of expression.

[46] Recommendation 2007(2) of the Committee of Ministers of the Council of Europe on Media Pluralism and Diversity of Media Content from 31 January 2007.

including information relating to those able to influence and/or benefit from the media outlet, and any support measures that outlet has received. It also refers to the setting of thresholds, based on objective criteria, such as "audience share, circulation, turnover/revenue, the share capital or voting rights."[47]

ARTICLE 19 finds that the provisions of Article 30 do not promote pluralism in a comprehensive manner. For example, we note that the Mass Media Law does not contain any provisions related to promotion of diversity of content or encouraging public service content. It also does not seek to ensure availability of a sufficient variety of media outlets provided by a range of different owners, both private and public.

While Article 30 seems to be directed at preventing accumulation by one owner of more than a 25% of mass media outlets, it is not very clearly worded. The broad prohibition of one founder (or co-founder) to "own, use, dispose or mange… over 25% of the mass media outlets distribute on the central or local mass media markets" should be replaced with the notion of "controlling power." It might be useful to replace the existing provisions with provisions on cross-ownership in the print industry and the broadcast media; for example, to stipulate that a private company that holds a controlling interest in a broadcaster cannot hold more than certain percentage of the capital of a print media business in the same broadcasting zone. A private company that holds a controlling interest in a print media outlet cannot hold more than the same percentage of the capital of a broadcaster in the same market.

Moreover, the legislation should take into account the horizontal integration phenomena, understood as mergers in the same branch of activity – in this case mono-media and multi-media concentrations – as well as vertical integration phenomena; that is, the control by a single person, company or group of some of the key elements of production, distribution and related activities such as advertisement or telecommunications.

Recommendations:

- The provisions of the Mass Media Law on media concentration should be carefully examined and expanded in the light of available international and regional standards in this area.

Interactions with the state and other bodies

Confidentiality of sources

Article 33 (unchanged through the April 2018 amendments) provides for the protection of confidentiality of sources. It stipulates that editorial boards "do not have the right to disclose the name of an information source, as well as information, data, facts or proof provided under the condition of nondisclosure of their name, as well as the name of an

[47] *Ibid.*

author signing their material with a pseudonym, without their written consent;" and that they "may represent sources of information or authors using pseudonyms in court upon their demand."

ARTICLE 19 notes that the protection of confidentiality of journalistic sources is also recognised in another piece of legislation – the Law on the Protection of Professional Activity of Journalists[48] – which guarantees this right in slightly different terms to "professional journalists."

ARTICLE 19 welcomes the statement of this right in both laws. The right to confidentiality of sources has been recognised under international and comparative national law as inherent in the right to freedom of expression. We find that an express statutory recognition of this right serves to emphasise its importance. At the same time, we make the following recommendations on the provisions of Article 33:[49]

- These provisions reverse the traditional presumption that the protection of confidentiality sources is a right of journalists and turn it into a legal obligation not to disclose information. Although the matter has never been dealt with by an international court, there are potentially serious problems with imposing source confidentiality as an obligation on the "editorial boards" of the media outlets.

- It is important that protection of sources is not restricted to "editorial boards" or "professional journalists" only. We reiterate that the right is drawn from the general right to freedom of expression as stated in Article 19 of ICCPR, which is a right that belongs that every person. It should be understood to apply to every person who uses the right to freedom of expression to publish information to a larger audience – including human rights defenders, for example, and non-governmental organisations. Importantly, it should also apply to "other persons who, by their professional relations with journalists, acquire knowledge of information identifying a source through the collection, editorial processing or dissemination of this information."[50] In other words, the right to withhold a source's identity should belong not only to the 'middlemen,' but also to others collaborating with them. This purpose of this rule is, of course, to prevent the protection of sources from being simply side-stepped by going around the 'middleman.'

[48] The Law on the Protection of Professional Activity of Journalists, No 402-I of 24 April 1997, as amended in April 2018.

[49] *C.f.* ARTICLE 19, Analysis of the Law on the Protection of Professional Activity of Journalists, November 2018.

[50] Recommendation No R (2000) 7 of the Council of Europe Committee of Ministers to member states on the rights of journalists not to disclose their sources of information, adopted 8 March 2000, Principle 2.

- It is not clear what is meant by: "editorial boards may represent sources of information or authors using pseudonyms in court upon their demand." It appears that the right to confidentiality of sources may be interfered with in the unspecified court proceedings. ARTICLE 19 is concerned about the vagueness of these provisions. We highlighted that under international and regional human rights standards[51] and in comparative national laws,[52] any demand to obtain protected information should be strictly limited to the most serious criminal cases. A request to obtain the information should only be approved by an independent judge in an open hearing and subject to appeal to an impartial judicial body. At the same time, disclosure should only be allowed if the government proves to the court's satisfaction that the following criteria are met:

  - The information is necessary to prevent imminent serious bodily harm, or to prove the innocence of a party. The investigation should never regard merely the disclosure of information to the journalist;

  - The information is absolutely necessary for a central issue in the case, relating to guilt or innocence, and the request for such information is limited in scope;

  - The information is unavailable by other means, where gaining access has already been tried by the relevant authorities, and they must prove that they have exhausted all other possible means of obtaining the information;

  - The request is made by the primary party to the case – that is an individual or body with a direct, legitimate interest; and

  - The judge finds that public interest in the disclosure of the source far outweighs the public interest in the free flow of information.[53]

Importantly, searches of media outlets or a journalist's office or home should not be used to bypass protection of sources rules. Such searches should be presumed to be invalid.[54]

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[51] For more information, see, for example ARTICLE 19 Response to the Special Rapporteur Consultation on Protection of Journalists' Sources and Whistleblowers, July 2015; the 2008 Joint Declaration of special mandates, 15 December 2008; Recommendation No. R (2000) 7 of the Committee of Minister, *op. cit.*

[52] At the national level, over 100 countries around the world have given journalists specific legal rights to protect their sources. See the comprehensive international survey of source protection, Privacy International, Silencing Sources: An International Survey of Protections and Threats to Journalist's Sources, 2007; ARTICLE 19, Amicus brief in the case of *Ed Moloney and Anthony McIntyre, Petitioners, vs United States*, 19 December 2012.

[53] ARTICLE 19's submission to the UN Special Rapporteur, *op.cit.*

[54] *Ibid.*

Recommendations:

- The rule on protection of confidentiality of sources should be cast as a right, not an obligation;
- The right should apply to everyone regularly engaged in the professional or regular dissemination of information;
- The Mass Media Law should ensure that any restrictions on confidentiality of sources comply with international freedom of expression standards.

Right for retraction and reply

Article 34 of the Mass Media Law (unchanged through the April 2018 amendments) provides for the right to retraction and reply. In particular, it states that legal entities and private parties have:

- The right to demand that editorial boards retract false information damaging their honour and dignity or business reputation published in the media outlet;

- The right to publish a retraction or a reply in the same mass media outlet in case of infringement of their rights and legal interests;

- The right to take legal action in case of the media outlet's evasion of publication of the retraction or reply or its disregard for the time limits established for their publication.

Article 34 also stipulates that retraction or a reply must be published under a special column on the same page where the material that caused it was published within one month following the receipt of the retraction or reply (or within the next issue in cases of periodicals) or in case of broadcasting "go on air in the same program or series of programs no later than one month after they were received." The text of the retraction or reply can be edited with an agreement of the requester only if "the word count and length of broadcast of the retraction or reply may damage activities of the mass media outlet."

At the outset, ARTICLE 19 notes that the right of reply and related rights are a highly contentious area of media law since this right represents an interference with freedom of expression. Some consider them as a low-cost, low-threshold alternative to expensive lawsuits for individuals whose personality rights (for example to reputation or to privacy) have been harmed by the publication of incorrect or misleading statements about them; others regard them as an impermissible interference with editorial independence. ARTICLE 19 and other bodies, such as the UN Special Rapporteur on Freedom of Expression, have repeatedly suggested that the right of reply should ideally be voluntary. Hence, in principle, we recommend that these issues should not be regulated by the Mass Media Law but left to be dealt with by self-regulatory mechanisms.

ARTICLE 19 makes the following comments on the scope of Article 34:

- It is not clear what the difference is between the rights of retraction and the right of reply. The scope of right to "retraction" is unclear. We note that under comparative regional standards, these two rights should be distinguished as follows:

  - A right of correction (not "retraction") should be limited to pointing out erroneous information published earlier, with an obligation on the publication itself to correct the mistaken material;

  - The purpose of a right of reply, on the other hand, is to give any person the right to have a mass media outlet disseminate his or her response where the publication of incorrect or misleading facts has infringed a recognised right of that person and where a correction cannot reasonably be expected to redress the wrong.[55]

These rights should be distinguished accordingly.

- Although Article 34 states that individuals and entities may demand "retraction" of "false information damaging their honour and dignity and business republication," no specification is provided as for who should prove the falsity of the statement; while the Uzbekistan Code on Civil Procedure specifies that the burden of proof in civil matters lies with the claimant. We reiterate that indeed, such onus should always be on the claimant as otherwise, anyone could make a claim for a retraction, thereby forcing the media outlets to prove, potentially in a court of law, the truth of their statements. This could be difficult, for example where the periodical has relied on confidential sources of information. The claimant should, for the same reason, be required to show that he or she has a justified interest in the correction;

- Article 34 does not allow for a media outlet to refuse to publish a reply or retraction. This omission should be amended. The provisions entirely fail to take into account the overriding importance of open debate on matters of public interest. The international and comparative standards in this area specifically recognise that certain legitimate public interests may override both the right to privacy and the right to reputation. A reply should not be available where the publication of the statement was justified by an overriding legitimate public interest. Requiring the correction of false statements of fact is one thing, going beyond this to allow a reply in response to critical reporting, or reporting which is not deemed to be sufficiently in-depth on an issue is quite another. This will create a chilling effect inasmuch as editors will not wish to publish material which might lead to them being required to publish

[55] See ARTICLE 19, the Camden Principles on Freedom of Expression and Equality, 2009, Principle 7.

a correction/reply and thus undermine the free flow of information, contrary to commitments in this area. A reply should not be available where the publication of the statement was justified by an overriding legitimate public interest. Furthermore, it should also be possible to refuse a claim for a correction or reply where a periodical itself publishes a correction which effectively redresses the harm done.

Recommendations:

- The right to reply and correction should ideally be dealt with by self-regulatory mechanisms, not by the Mass Media Law. Alternatively, provisions should be made to allow for refusal to publish a "correction" and provisions on the right should be clarified;
- The rights of reply and correction should be separated and restricted. In particular, a right to reply should not be available where the publication of the statement was justified by an overriding legitimate public interest.

Must-carry rules

Article 35 (unchanged through the April 2018 amendments) provides "must carry requirements" which oblige the media outlets established by public and administrative authorities to publish/broadcast official communications these authorities. These include "official statements and materials of such bodies as well as legislation and regulation," "urgent messages about emergencies or statements of competent government authorities for the purposes of rapid notification of the public," "legally effective court decisions, containing the order regarding their publication in a specific mass media outlet free of charge within the time limit indicated in the court decision" and "any other information, statements and announcements" on the basis of contracts made with editorial.

ARTICLE 19 is concerned that these provisions go too far. We note that some states impose "must-carry" requirements on operators of cable, satellite and similar audio-visual services, under which they are obliged to carry some or all of the terrestrial stations licensed to broadcast in the country or relevant area, usually including the public service broadcaster.[56] However, critics of must-carry requirements contend that they constitute an interference with the "editorial freedom" of cable and satellite operators, by requiring them to carry expressions of others against their will. It is also sometimes argued that free market principles will ensure that viewers have access to

[56] An example of a country where must-carry requirements are imposed is the USA; under the 1992 Cable Television Consumer Protection and Competition Act, cable operators are required to make up to one-third of their capacity available for the retransmission of local or national terrestrial stations. A number of cable companies challenged the Act before the Supreme Court, claiming that it violated the right to freedom of expression. In a narrow 5-4 decision, the Court ruled that the act was constitutional. See *Turner Broadcasting v. FCC*, 512 U.S. 622 (1994).

all the channels they want, rendering must-carry requirements unnecessary. Supporters point out that in practice, in many countries the free market does not achieve media diversity; if there is a diverse terrestrial broadcasting system, it should therefore be protected and made available to cable and satellite viewers. As stated in the Joint Declaration of the Special Rapporteurs: "Media outlets should not be required by law to carry messages from specified political figures, such as the president."[57]

ARTICLE 19 acknowledges that certain public information mechanisms may be required to carry specific information, such as materials related to the work of public authorities and their public activities; an example might be a public television channel created expressly for the purpose of covering meetings of Parliament. But it is a quite different matter to require all media outlets to carry publication of official statements and materials of all public bodies, essentially requiring them to perform propaganda functions for these bodies and potentially forcing all media to serve as government mouthpieces, with no independence at all.

As for the obligation to publish court decisions, there might be a set of extremely narrow circumstances in which it might be appropriate for a court to order publication of a decision in a particular mass media publication – for example, as part of a remedy for a defamatory statement published by that media. This power, to the extent that it is legitimate, should be part of the general powers of courts to order remedies for breach of the law. It is not appropriate to include an open-ended provision like this in a media specific law.

Recommendations:

- Article 35 should be abolished.

Right to information

Article 351 of the Mass Media Law (introduced through the April 2018 amendments) provides that mass media outlets have the right to request public and administrative bodies to provide information about their activities as well as request interviews with public officials. In case of a refusal, public authorities must provide reasoning for the refusal.

ARTICLE 19 notes that further provisions on journalists' right to information is also provided in a separate law – the Law on Professional Activity of Journalists – in somewhat different terms.

We reiterate that it is positive that the state wishes to provide for the right to information, recognised as an integral part of the right to freedom of expression. At the same time, we note that:

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[57] The 2003 Joint Declaration, *op.cit.*

- The right to information should be guaranteed to everyone, not only media outlets. The Mass Media Law does not indicate whether the right to information under it differs in any way from the protection of the right of the public at large to access information. There is no justification, however, for any difference in treatment of media outlets and members of the public as holders of the right of access to information.

- The scope of refusal to provide information should be limited. Article 35[1] merely states that public authorities should just provide "motivation" for the refusal. We note that under international standards, public bodies can refuse to provide information only if they can show that the information falls within the scope of a limited range of exceptions as permitted under a strict three-part test:
  - the information relates to a legitimate aim listed in the law;
  - disclosure threatens to cause substantial harm to that aim; and
  - the harm to the aim is greater than the public interest in having the information.[58]

Article 35[1] falls well short of reflecting this three-part test on exceptions to these requirements.

Recommendations:

- Uzbekistan should adopt a comprehensive freedom of information law. Alternatively, the Mass Media Law should be amended to provide that everyone has the right of access to information. Any restrictions on access to information should meet the requirements of international standards.

Other restrictions

The final chapter, Chapter 6 (which remains unchanged through the April 2018, apart from Article 40), provides further regulation of certain aspects of the media outlets operations. These include provisions on "news agencies" and their legal status, provisions on international cooperation of media outlets, broad provisions on accreditation of media outlets and foreign media outlets and "liabilities" for violations of the Mass Media Law.

We note that some of these provisions are already addressed in other pieces of legislation (for example the provisions on accreditation are also enumerated in greater detail in the Law on Professional Activity of Journalists and in the extremely problematic Decree on Regulating Foreign Media[59] (amended March 2018[60]) and it is unclear to what

[58] See ARTICLE 19, The Right to Know Principles, originally developed in 1999, and were updated in 2015, Principle 4. See also the 2004 Joint Declaration of special mandates, 6 December 2004.

[59] The Decree on Regulating Foreign Media, February 2006, available (in Russian) at https://bit.ly/2NnbyMe.

[60] The Amendments to the Decree on Regulating Foreign Media, March 2018, available (in Russian) at https://bit.ly/2GDZmGg.

extent these provisions overlap or how they should be interpreted in case of conflict between different laws.

ARTICLE 19 suggests to remove this duplicity, while we highlight that some of the issues outlined in Chapter 6 should not be subject of statutory provisions in the first place. In particular, we wish to highlight the following:

- Under international law all accreditation requirements must be necessary in view of the available place and events. Accreditation should never be used as a work permit for journalists to cover public institutions. As such, the provisions of the Mass Media Law should provide safeguards against arbitrary refusal to grant accreditation and ensure that it is open to anyone everyone regularly engaged in the professional or regular dissemination of information.

- Provisions on violation of legislation regulating mass media (Article 40 was changed through the April 2018 amendments to absolve editors-in-chief and journalists from responsibility for republishing information from official web-sites as well as other sources of official information) are unclear. While it is positive that the State wishes to establish some system of protection of mass media and the responsibilities of the State and other institutions in this area, there is no indication as to what that liability for violations involves in practice. One might imagine, however, that it would include a fully-fledged and effective system of law and order that would protect everyone in Uzbekistan, and not one that would protect solely journalists (narrowly defined) as this provision suggests. Indeed, the state has a positive duty under international law to create an enabling environment for freedom of expression and effective remedies for violations.

Recommendations:

- The Mass Media Law should ensure that accreditation is required only if due to limited space all interested journalists cannot attend a meeting or follow the activities of a particular body. It should provide safeguards against arbitrary refusals of accreditation, such as clear accreditation rules. The accreditation should be overseen by an independent body, such as a journalists' union. There should be a right to appeal refusals for accreditations to court;
- Uzbekistan should ensure that the country's justice system is fully independent and adequately resourced to protect the human rights of all in the country. They should be able to interpret all legislation in compliance with international freedom of expression and human rights standards. Such a provision should already be part of domestic law.

About ARTICLE 19

ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, freedom of expression and equality, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at https://www.article19.org/law-and-policy/.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

DEFENDING FREEDOM OF EXPRESSION AND INFORMATION

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