

ARTICLE 19



Uzbekistan: Law on the Protection of Professional Activity of Journalists

February 2019

Legal analysis

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Executive summary

In February 2019, ARTICLE 19 analysed the Law on the Protection of Professional Activity of Journalists (the Law), adopted by the Uzbekistan Parliament in 1997, and amended most recently in April 2018, for its compliance with international freedom of expression standards.

ARTICLE 19 finds that the Law aims to provide “professional journalists” with “protection,” and includes a number of positive features, including the prohibitions of censorship and prior approval of the publication; it also guarantees a number of rights of journalists, including the right to information and protection of sources; and establishes the “liability” of state authorities and other bodies for violating rights of journalists.

From the outset, ARTICLE 19 notes that democracies typically do not have a specific law on regulation of the press and/or on the “professional activity of journalists.” It also observes that the state of freedom of expression in Uzbekistan has been a contentious subject for ARTICLE 19 for a number of years, as the country has a number of laws that fail to comply with international freedom of expression standards and these laws have been used to control the media in the country. As such, it is not clear how the Law is interpreted in the context of an otherwise restrictive legislation for freedom of expression. Although the Law is not inherently problematic, it is questionable whether it actually fulfils its apparent objective of protecting journalists – or whether its adoption intends to create additional mechanisms to control the press, over and above the general laws applicable to any individual or business.

ARTICLE 19 analyses key provisions of the Law on the basic premise that the protection of journalists necessarily requires the full protection of journalists’ human rights, in particular their freedom of expression upon which the exercise of their journalism and a healthy democracy depends. In the analysis, ARTICLE 19 highlights its concerns and conflicts of the Law with international human rights standards and actively seeks to offer constructive recommendations on how the Law can be amended.

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 international standards. The legislation should ensure that any restrictions on freedom of expression should strictly meet the three-part test under international human rights standards;
- The definition of “journalist” in the Law should be revised. It should be replaced with a more functional definition of journalism and should be applied to any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of communication;

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- The Law should be amended to provide that everyone (both journalists and other non-journalists) have the right of access to information. Any restrictions on access to information should meet the requirements of international standards. Uzbekistan should also adopt a comprehensive freedom of information law;
 - All provisions of the Law setting out professional and ethical standards for journalists should be repealed. An independent self-regulatory body should establish the ethical standards for the press. An independent broadcast regulator should set out the broadcasting standards;
 - The rule on protection of sources should be cast as a right, not an obligation, and it should apply to everyone regularly engaged in the professional or regular dissemination of information. The Law should ensure that any restrictions on confidentiality of sources should comply with international freedom of expression standards;
 - The 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. The Law 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 and journalists should be granted a right to appeal refusals for accreditations to court;
 - Uzbekistan should ensure that its justice system is fully independent and adequately resourced to protect the human rights of all in the country. The justice system should be able to interpret all legislation in compliance with international freedom of expression and human rights standards. A provision enabling this should already be part of domestic law.

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Introduction

In February 2019, ARTICLE 19 analysed the Law on the Protection of Professional Activity of Journalists (the Law), adopted in 1998 and amended on 18 April 2018,¹ for its compliance with international freedom of expression standards. The Law seemingly provides protection to professional journalists and lists a range of rights, guarantees and obligations.

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,² 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.³ Despite legal and constitutional provisions on prohibition of censorship, a number of reports clearly demonstrate a discrepancy between law and reality.⁴ 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 2007 Law on the Mass Media (as also amended in April 2018)⁵ and analysed by ARTICLE 19, and relevant decrees, such as the Decree on Regulating Foreign Media (amended March 2018).⁶ The associated legislation is also problematic as it fails to comply with international freedom of expression standards.

In this analysis, ARTICLE 19 highlights its concerns and conflicts of the 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.

¹ 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>. The analysis is based on an unofficial translation of the Law. ARTICLE 19 does not accept responsibility for errors in the analysis arising from any inaccuracies in the translation.

² Freedom House, Freedom of Press: Uzbekistan, 2017.

³ Human Rights Watch, Censorship Still Alive and Well in Uzbekistan, 13 December 2017.

⁴ See Human Rights Watch, Report on Uzbekistan, 1997.

⁵ The Law on *Mass Media*, January 2007, available at <https://bit.ly/2SmhdTm>; the 2018 Amendments are available at <https://bit.ly/2VdbRfa>.

⁶ 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>.

ARTICLE 19 urges the Uzbekistan Government and the Parliament to address the shortcomings identified in this analysis to ensure the compatibility of the Law with international standards of freedom of expression. We also urge the Government to undertake a comprehensive review of all free speech-related laws and bring them into compliance with international standards. We 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.

International human rights standards

The protection of freedom of expression under international law

The right to freedom of expression is protected by a number of international human rights instruments, in particular Article 19 of the **Universal Declaration of Human Rights (UDHR)**⁷ and Article 19 of the **International Covenant on Civil and Political Rights (ICCPR)**.⁸ 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,⁹ the Final Document of the Copenhagen meeting of the human dimension of the OSCE,¹⁰ the Charter of Paris agreed in 1990,¹¹ the final document of the 1994 Budapest CSCE Summit,¹² and the Istanbul Summit Declaration.¹³

Global recognition of the importance of freedom of expression is furthermore reflected in regional human rights treaties and decisions of regional human rights instruments.¹⁴ While neither these instruments nor judgments by courts and tribunals operating under them are directly binding on Uzbekistan, 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 Uzbekistan ratified in August 1995 and is therefore binding.

⁷ United Nations (UN) General Assembly (GA) Resolution 217A(III), adopted 10 December 1948.

⁸ GA Resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, **A/RES/21/2200**, 16 December 1966.

⁹ OSCE, Helsinki, 1 August 1975

¹⁰ Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990; see in particular paras 9.1 and 10.1.

¹¹ Charter of Paris for a new Europe, CSCE Summit, November 1990.

¹² Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paras 36-38

¹³ OSCE Istanbul Summit, 1999, para 27; see also para 26 of the Charter for European Security adopted at the same meeting.

¹⁴ See, the African Charter on Human and Peoples' Rights, adopted 26 June 1981, in force 21 October 1986; the American Convention on Human Rights, adopted 22 November 1969, in force 18 July 1978; and the European Convention on Human Rights (European Convention), ETS Series No. 5, adopted 4 November 1950, in force 3 September 1953.

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;
- **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.¹⁵

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.¹⁶ 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.¹⁷

¹⁵ Human Rights Committee, *Velichkin vs Belarus*, Comm. No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

¹⁶ *C.f.* the European Court for Human Rights (the European Court), *Handyside vs the UK*, 6 July 1976, para 56.

¹⁷ 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.

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”¹⁸ and the essential role of the press in a democratic society.¹⁹

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 from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest. 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 to 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

¹⁸ See, e.g. the European Court, *Thorgeirson vs Iceland*, 25 June 1992, para 63 or *Castells vs Spain*, 24 April 1992, para 43.

¹⁹ European Court, *Dichand and others vs Austria*, 26 February 2002, para 40.

policy designed to maximise media pluralism and diversity. Unlike Internet and print media, this body is not self-regulatory but is independent from the industry, as well as from the state and political parties.

Constitution of Uzbekistan

Uzbekistan ratified the International Covenant on Civil and Political Rights in August 1995. The Constitution of Uzbekistan²⁰ (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. Additionally, Article 67 of the Constitution of the Republic of Uzbekistan 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.”

²⁰ Constitution of the Republic of Uzbekistan, available at <http://www.lex.uz/acts/35869>.

Analysis of the Law

General observations

At the outset, ARTICLE 19 notes that the Law is very brief (containing 15 Articles). As its title and objective (Article 1) suggest at least, its specific purpose is to provide “professional journalists” with “protection.” The Law then provides a number of positive features, including:

- Establishing the precedence of international treaties over domestic legislation (Article 2);
- Prohibition of censorship, prior approval of the publication or changing or withdrawing printed or broadcasted materials (Article 4);
- Outlining the rights of journalists (in Article 5) which include the right to request information and obtain access to documents from various bodies, conduct investigative journalism, be present at events of state authorities and request meetings, access to court hearings and other important events, refuse to carry out assignments that contravene the law, refuse to sign materials prepared by journalists if these are altered prior to publication by editors, join journalistic associations and enjoy other rights under domestic legislation;
- Right to confidentiality of journalistic sources (Article 7);
- Right to personal integrity (Article 8) and other rights protected by law (Article 10);
- Establishing liability of state authorities and other bodies for violating the rights of journalists;
- Right to conduct investigative journalism (Article 9) and the prevention of search and seizure of materials gathered in the course of such investigations.

ARTICLE 19 does not dispute the stated objectives of the Law – that is to legislate specific protection of journalists in the country and the positive protection it establishes in a number of areas. However, we note that democracies typically do not have a specific law on regulation of the press and/or on the “professional activities of journalists;” media legislation typically focuses on broadcasting regulation and freedom of information or on protection of freedom of expression in general.

However, we also observe that the state of freedom of expression the Uzbekistan has been a subject of serious concern to ARTICLE 19 for a number of years. The country at present has a number of laws that fail to comply with international freedom of expression standards. Moreover, as documented by several reports, Uzbekistan frequently violates the right to freedom of expression, including the above-mentioned guarantees (in particular Article 8 and 10 of the Law). In general, despite some recent improvements, journalists and media organisations are still unable to work freely and independently in the country. As such, it is not clear how the Law is interpreted in the context of an otherwise restrictive legislation for freedom of expression. Although the Law is not inherently problematic, it is questionable whether it actually fulfils its apparent objective of protecting journalists – or whether its adoption intends to create additional mechanisms to control the press, over and above the general laws applicable to any individual or business.

ARTICLE 19 therefore analyses key provisions of the Law on the basic premise that the protection of journalists necessarily requires the full protection of journalists' human rights, in particular their freedom of expression upon which the exercise of journalism and a healthy democracy depends. In our view and based on our experience in the country, many, indeed most, of the substantive provisions achieve is the exact opposite – significant restrictions of journalistic freedom of expression and other human rights at a time when their reinforcement is most needed. In ARTICLE 19's view, such restrictions on journalistic freedom of expression and other human rights are in clear violation of Uzbekistan's international legal obligations.

Recommendations:

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

Scope of the Law and definition of “journalist”

ARTICLE 19 is concerned that the Law limits the protection to the “professional activities of journalists.” We note that this is a change to the original version of the Law which stated that the purpose was to “define the rights and obligations” of journalists and to establish “liability for violation of the legislation on the protection of professional activity of journalists.”

In Article 3, the Law defines a journalist as “a person carrying out collection, analysis, editing, preparation and distribution of communications and materials for the mass media on the basis of employment or other contractual arrangements.” While the April 2018 amendments have expanded this definition somewhat, this definition means that the scope of the Law is very restrictive and reflects a very narrow understanding of journalism.

ARTICLE 19 notes that the concept of “journalism” has significantly evolved since the adoption of the Law in 1997. Although there is currently no agreed definition of “journalism” or what constitutes “activity of journalists” at the international level, the Human Rights Committee and the Council of Europe have provided tentative definitions. In particular, they have recognised the important role that “citizen journalists” play in the gathering and dissemination of information. Most significantly, they have proposed a functional definition of “journalism,” one which encompasses those communicating publicly using new media, provided they fulfil certain criteria.

In its General Comment No 34, the UN Human Rights Committee (Human Rights Committee), the treaty body of independent experts monitoring States’ compliance with the ICCPR, defined “journalism” as follows:

Journalism is a function shared by a wide range of actors, including ... bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with [Article 19] paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.²¹

²¹ Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 44.

In other words, journalism is an activity, which consists of the collection and dissemination of information to the public via any means of communication.

The Committee of Ministers of the Council of Europe (CoE) has adopted an equally broad definition of the term 'journalist.' In Recommendation No. R (2000)7, the Committee said:

The term "journalist" means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.²²

It has also called on member states to:

- Adopt a new, broad notion of media which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents;
- Review regulatory needs in respect of all actors delivering services or products in the media ecosystem so as to guarantee people's right to seek, receive and impart information in accordance with Article 10 of the European Convention on Human Rights, and to extend to those actors relevant safeguards against interference that might otherwise have an adverse effect on Article 10 rights, including as regards situations which risk leading to undue self-restraint or self-censorship.²³

In addition, the Committee of Ministers provided a set of indicators to determine whether a particular criterion is fulfilled. For example, a particular organisation or individual engaged in the dissemination of information will fully meet the public expectation criterion if it:

- is available;
- is reliable;
- provides content that is diverse and respects the value of pluralism;

²² Committee of Ministers, Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, adopted by the Committee of Ministers on 8 March 2000 at the 701st meeting of the Ministers' Deputies.

²³ Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, adopted on 21 September 2011.

-
- respects professional and ethical standards; and
 - is accountable and transparent.²⁴

At the same time, the Committee of Ministers highlighted that each of the criterion should be applied flexibly.²⁵

Hence, the definition of “journalist” in Article 3 of the Law is problematic, as it indicates that a professional contract is obligatory for anyone wishing to be a journalist in Uzbekistan (and to receive protection under the Law). The provision therefore effectively establishes a form of licensing scheme for journalists in breach of the right to freedom of expression. ARTICLE 19 notes that the right to freedom of expression (and the right to work as a journalist) belongs to everyone and the activity of disseminating information in the public interest is not something that should require employment or contractual arrangements. Moreover, it should apply to all persons involved in a journalistic process providing information to the public, including editors, commentators, freelancers and part-time authors, bloggers and citizen journalists. The protections should apply no matter the format or medium including print, broadcast, electronic, Internet and books. It should also apply to all those with a professional relationship to journalists including media organisations, editors, printers, distributors and telecommunications providers.

Recommendations:

- The definition of “journalist” in the Law should be expanded and elaborate further. It should be replaced with a more functional definition of journalism and apply to any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of communication.

²⁴ *Ibid.*

²⁵ *Ibid.*

Rights of journalists

As noted earlier, ARTICLE 19 appreciates any legislation that spells out the protection of freedom of expression and provides protection to those who engage in journalistic activities (see previous section). We also appreciate that the provision of access to information in Article 5 of the Law (substantially unchanged by the April 2018 amendments), which states that journalists have *inter alia* right to request information from the state and other authorities and “obtain access to documents, materials and information except for state secrets and otherwise legally protected secrets.”

The first part impresses the established principle that journalists have a right to state-held information and may relay that information to the public. The second part provides exceptions to the principle of disclosure of information to journalists. This latter part is excessively broad.

ARTICLE 19 notes that according to international standards on the right of access to information, all requests for information – regardless of whether they are made by journalists or members of the public – made to public bodies should be met unless the public body 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 must relate to a legitimate aim listed in the law;
- disclosure must threaten to cause substantial harm to that aim; and
- the harm to the aim must be greater than the public interest in having the information.²⁶

ARTICLE 19 notes that the provisions of Article 5 of the Law fall well short of reflecting this three-part test on exceptions to the principle of maximum disclosure. Furthermore, it does not indicate whether the protection of journalists’ rights of access to information by this Law 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 journalists and members of the public as holders of the right of access to information.

²⁶ 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.

Additionally, Uzbekistan is yet to adopt “precise definitions of the concepts of “state secret” and “other secret protected by law” which would meet international freedom of expression standards.²⁷ The existing Law on the Protection of State Secrets²⁸ has not been amended.

Recommendations:

- The Law should be amended to provide that everyone (both journalists and other non-journalists) have the right of access to information. Any restrictions on access to information should meet the requirements of international standards. Uzbekistan should also adopt a comprehensive freedom of information law.

²⁷ C.f. OECD, Istanbul Anti-Corruption Action Plan, Third Round of Monitoring: Uzbekistan – Progress Update, September 2017, p.62, available at <https://bit.ly/2T5bwhj>.

²⁸ Law on the Protection of State Secrets, May 1993, available at <http://www.lex.uz/docs/98845>.

Responsibilities of journalists

Several provisions of the Law set out journalists' responsibilities and duties – Article 6, Article 7¹ and Article 15. These include *inter alia* obligation to “abide by requirements of the law,” “provide unbiased information,” ensure “reliability of communication” or “observe the rules of journalistic ethics” (to be determined by a professional association of journalists) and “other responsibilities as determined by legislation.”

Although the Law stipulates that rules of professional ethics should be determined by a professional association, ARTICLE 19 is very concerned about the State's imposition of professional duties on journalists. We note that in most democratic countries, journalistic ethics are entirely matters for self-regulation. We recall that the OSCE Representative on Freedom of the Media has stated:

True ethics standards can be made only by independent media professionals, and can be obeyed by them only voluntarily. Whether passed in good will or not, any attempt to impose standards on journalists by law will result in arbitrary limitations of their legitimate freedoms, and restriction on the free flow of information in society.²⁹

Experience has shown that legal regulation of ethical matters often leads to harassment of journalists who are critical of the government. Hence, the state should have no role in setting up professional duties of journalists. The latter are a matter of media self-regulation. This does not prevent the state from establishing legitimate restrictions on freedom of expression, such as in defamation laws, however, these should still fully comply with international freedom of expressions standards.

Recommendations:

- All provisions setting out professional and ethical standards for journalists in the Law should be repealed. An independent self-regulatory body should establish the ethical standards for the press. An independent broadcast regulator should set out the broadcasting standards.

²⁹ Miklos Haraszti, The merits of media self-regulation, Balancing rights and responsibilities, in The Media Self-Regulation, All questions and answers, OSCE, 2008, p. 15.

Protection of sources

Article 7 of the Law (amended in April 2018) deals with an integral part of freedom of expression and “one of the basic conditions for press freedom,” confidentiality of sources. It provides that “confidential information in journalism is information, as well as facts and events communicated voluntarily by citizens using other information sources under the condition of not disclosing their names. A journalist is not permitted to disclose information classified as secret without permission of the journalistic source as well as to use such information for their personal or third persons’ gain.”

ARTICLE 19 appreciates the commitment to provide protection to sources. However, we note that the provisions of Article 7 are very unclear. For example, it is not clear if journalists could be compelled to disclose other information that could identify the source through other means than “their names.” It is also not clear who and under what conditions determines that “information is classified as secret.” We also find it problematic that these provisions reverse the traditional presumption that the protection of 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 media.

ARTICLE 19 notes that protection of sources has been addressed in a number of international,³⁰ regional³¹ and national³² standards. These standards stipulate that journalists (defined functionally) have the right not to reveal their sources of information, unless it is necessary to prevent a major or serious crime (such as murder, manslaughter, severe bodily injury) or for the defence of a person accused of having committed a major crime. In addition, all other alternative measures must be exhausted and there must be

³⁰ 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.*

³¹ Declaration of Principles of Freedom of Expression, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev.5; entered into force 21 October 1986; Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Cooperation in Europe; Inter-American Declaration of Principles of Freedom of Expression, October 2000.

³² 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.

a fair and public hearing – by independent and impartial courts - of the journalist concerned before an order for disclosure may be issued.³³

It would be preferable for Uzbekistan to follow the dominant practice in this area.

Recommendations:

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

³³ See, e.g. Explanatory Memorandum to Recommendation No R (2000) 7 of the Committee of Ministers to member states on the rights of journalists not to disclose their sources of information, paras 40, 41 and 48.

Accreditation of journalists

Articles 11, 12 and 13 of the Law deal with accreditation of journalists. They stipulate that journalists can be accredited with a state agency or other organizations or in a foreign state as well as foreign journalists to be accredited in Uzbekistan; and stipulate rights of accredited journalists.³⁴ The Law provides for “termination” of accreditation of foreign journalists in Uzbekistan if “he violates the current law or other legislation” as well as international treaties, while such decision can be challenged the Law does not specify the process for such a challenge. These provisions are fairly broad and do not provide any restrictions on state authorities to refuse accreditation.

ARTICLE 19 notes that under international law all accreditation requirements must be necessary in view of the available space and the event itself. In particular, the Human Rights Committee stated:

[I]ts operation and application must be shown as necessary and proportionate to the goal in question and not arbitrary ... The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent.³⁵

Similar recommendations have been raised by international mandates on freedom of expression:

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria published in advance. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work.³⁶

³⁴ E.g. Article 11 of the Law was amended in April 2018 and states that accredited journalists to visit the premises of the accrediting body, be present in open joint meetings and public events of that body, request documents from that body and make copies, and to use recording obtained from that body to prepare journalistic materials.

³⁵ Human Rights Committee, *Gauthier vs Canada*, Comm. No. 633/1995, 7 April 1999, para 13.6.

³⁶ The 2003 Joint Declaration, *op. cit.* Also, the OSCE Representative on Freedom of the Media noted that “a common misconception about the accreditation system is the notion that it has a ‘permissive’ function – permissive in the sense that a government or other regulatory body has the right to grant, deny or revoke a journalist’s accreditation. By applying the same rules to accreditation as for a work permit, the government exercises undue control over journalists;” Special Report: Accreditation of Journalists in the OSCE Area, Observations and Recommendations, 25 October 2006.

ARTICLE 19 highlights that accreditation should never be used as a work permit for journalists to cover public institutions. As such, the provisions of the Law should provide safeguards against arbitrary refusal to grant accreditation and ensure that it is open to anyone meeting functional definition of journalism.

Recommendations:

- The 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. The Law 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 and journalists should be granted a right to appeal refusals for accreditations to court.

Liability for violations

Article 14 of the Law (unchanged by the April 2018 amendments), states that public officials of state authorities, self-governance bodies, public associations, institutions, agencies and organisations are “liable” for various violations of journalists’ rights, including censorship, hindering their professional activities, harassing journalists, illegally confiscating their materials and other actions.

While it is positive that the state wishes to establish some system of protection of journalist and responsibilities of state and other institutions in this area, the provisions of Article 14 are not clear. 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 enabling environment for freedom of expression and effective remedies for violations.

Recommendation:

- 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.

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