

ARTICLE<sup>19</sup>

# Tajikistan: Brief commentary on the accreditation of foreign journalists

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Legal analysis



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## Introduction

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In this legal analysis, ARTICLE 19 reviews the proposed regulation on the accreditation of foreign journalists in the Republic of Tajikistan (the draft Regulation).

The analysis is based on the application of the relevant international and regional standards on freedom of expression, as well as comparative law and best practices on journalist accreditation schemes. The present legal commentary draws on a set of previous ARTICLE 19's publications on the topic.<sup>1</sup>

Gathering information is clearly essential to the media, and the activity of newsgathering is protected under the right to freedom of expression. Any accreditation scheme therefore needs to be seen in the light of the essential element of freedom of expression—the right to “seek and receive” information and ideas.

Under international freedom of expression standards, media accreditation schemes can only be appropriate in narrow circumstances where it is necessary for providing journalists with access to certain places and/or events where capacity or safety issues are at stake. In a nutshell, accreditation should be seen as a facilitator of the work of journalists, not a permit or barrier to the performance of their function to inform the public. In any event, any decision to grant, extend or withdraw accreditation should be made by an independent body in the framework of a transparent process and on the basis of clear and non-discriminatory criteria. Accreditation should never be made conditional upon the content produced or intended by a journalist.

While domestic laws might interpret accreditation as a scheme, system or a number of privileges, it should never function as permission or a work permit. Accreditation rules should improve the working conditions for journalists rather than damage them or grant the state instruments of control and censorship over journalistic activities. This approach, equally applicable to both domestic and foreign journalists, is necessary to ensure the public's right to freedom of information.

ARTICLE 19 finds that the draft Regulation raises a multitude of concerns from a freedom of expression perspective. In their current form, the suggested rules create a system of onerous barriers for foreign journalists to access and work, without interference, in Tajikistan. Eligibility for accreditation is linked to the content of journalistic activity, which amounts to a form of censorship.

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<sup>1</sup> For example, ARTICLE 19, [International standards: Regulation of media workers](#), 2012; and [Central Asian Pocketbook on Freedom of Expression](#), 2006.

Additionally, the draft Regulation treats journalism as a regulated profession, rather than a civic function, which excludes bloggers, freelancers, and other actors that may perform journalistic activities in Tajikistan from obtaining accreditation.

Other problematic elements include the extensive lists of required documents, making visas for journalists conditional upon accreditation, excessive waiting periods, the possibility of arbitrary withdrawal of accreditation without an explanation, and the requirement to disclose pseudonyms.

Finally, sanctions are to be imposed on foreign journalists who perform their journalistic functions in Tajikistan without valid accreditation, which will produce a significant chilling effect and will restrict the media environment in the country.

As such, ARTICLE 19 calls on the Government of Tajikistan to withdraw the proposal on accreditation of foreign journalists in its entirety. If implemented, the regulation will not only severely restrict the rights of foreign journalists but will also violate the right of the public to be informed on issues of public interest, as the barriers will limit the plurality of media sources in Tajikistan.

## Relevant international freedom of expression standards

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The right to freedom of expression, protected under the international human rights standards and the legislation of Tajikistan, entails a right to “seek and receive” information and ideas.

Under Article 19 para 3 of the International Civil and Political Rights (ICCPR), which Tajikistan has signed and ratified, the right to freedom of expression is not an absolute right. It may be legitimately restricted by the State in certain circumstances. Under the so-called three-part test any restrictions:

- **Must be provided for by law:** any restriction must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable people to regulate their conduct accordingly;<sup>2</sup>
- **Must pursue a legitimate aim,** exhaustively enumerated in Article 19 para 3 of the ICCPR. When a threat to the legitimate aim is invoked, the State must show in a specific and individualised fashion the precise nature of the threat at issue.<sup>3</sup>
- **Must be necessary in a democratic society:** Necessity entails an assessment of whether the proposed limitation satisfies a “pressing social need” and whether the measure is the least restrictive to achieve the aim. A measure cannot be regarded as necessary where a less restrictive means could be employed to achieve the same end. The proportionality lens should be used to assess the nature and severity of the penalties imposed.<sup>4</sup>

Like all restrictions on freedom of expression, restrictions on newsgathering must comply with this three-part test. In particular, the UN Human Rights Committee, a body tasked with interpreting the ICCPR, has stated that the “necessity test” means that an accreditation procedure should not be susceptible to political interference and should impair the right to gather news as little as possible. It explicitly stated that

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<sup>2</sup> See, *inter alia*, the European Court of Human Rights (the European Court), *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina*, App. No. 17224/11, 27 June 2017; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, App. No. 931/13, 27 June 2017; or *De Tommaso v Italy*, App. No. 43395/09, 23 February 2017; *Fernández Martínez v Spain*, App. No.56030/07, 12 June 2014, para. 117; *Cumhuriyet Vakfi and Others v Turkey*, App. No. 28255/07, 8 October 2013; or *Ahmet Yildirim v Turkey*, App. No. 3111/10, 18 December 2012.

<sup>3</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 29 July 2011, para 35.

<sup>4</sup> See, *inter alia*, the European Court, *Fressoz and Roire v France*, App. No. 29183/95, 21 January 1999; or *Yarar v Turkey*, App. No. 57258/00, 19 December 2006.

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.<sup>5</sup>

The Organisation for Security and Co-operation in Europe (OSCE) has similarly stressed that journalists should not lose their accreditation based on the contents of their writings:

Recalling that the legitimate pursuit of journalists' professional activity will neither render them liable to expulsion nor otherwise penalize them, [member States] will refrain from taking restrictive measures such as withdrawing a journalist's accreditation or expelling him because of the content of the reporting of the journalist or of his information media.<sup>6</sup>

Similarly, the OSCE Representative on Freedom of the Media noted, with reference to state practice in Central Asian countries, that

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.<sup>7</sup>

Denying accreditation of a foreign media or journalist based on their national origin as a "symmetrical response" or "countermeasure" against a specific country is impermissible. The OSCE Representative on Freedom of the Media has pointed that the "symmetrical response" clauses that exist in the accreditation rules in Russia and Belarus are in violation of international standards.<sup>8</sup>

Because of the transnational nature of the right to freedom of expression, international standards make no explicit distinction between accreditation of national and international journalists. The professional functions and duties of journalists remain the same regardless of their place of operation or national origin – they serve as public watchdogs realizing the public right to freedom of expression and information. Foreign journalists receive accreditation for

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<sup>5</sup> Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 44. See also *Gauthier v. Canada*, Comm. No. 633/1995, 7 April 1999, UN Doc. CCPR/C/65/D/633/1995, para 13.6.

<sup>6</sup> OSCE, the [1989 Concluding Document of the Vienna Meeting, Information](#), Clause 39, p. 29.

<sup>7</sup> OSCE, The Representative on Freedom of the Media, [Special Report: Accreditation of Journalists in the OSCE Area](#), Observations and Recommendations, 25 October 2006, p. 3.

<sup>8</sup> OSCE, *Accreditation of Journalists in the OSCE Area*, *op.cit.*

the same reason as national journalists, for instance, when they wish to attend official events, zones of natural disasters or military conflicts.

Nevertheless, working outside home countries may be particularly challenging for foreign journalists. Some journalists may need visas and additional assistance when travelling in a foreign country, such as help from security guards or guides. Therefore, the only difference between accreditation for national and foreign journalists is that foreign journalists may need some additional privileges as a result of accreditation, for example, multiple entry visas. However, visas should be granted to non-accredited journalists as well. Receiving a visa should not be made conditional upon a successful accreditation application. In contrast, it is permissible to attach certain privileges to accredited journalists, such as multiple entry visas.

To summarise the standards outlined above, the following **minimum** requirements are necessary for an accreditation scheme to be compliant with freedom of expression standards. A freedom of expression compliant accreditation scheme must:

- be administered by a body which is independent from the government and follow a transparent procedure;
- be based on specific, non-discriminatory, and reasonable criteria published in advance;
- only be applied to the extent justifiable by genuine space constraints; and
- not permit accreditation to be withdrawn based on the work of the journalist or media outlet concerned.

It follows that certain approaches to accreditation rules cannot be considered compliant with international standards. These include:

- Treating accreditation as a work permit;
- Unclear or non-transparent rules for accreditation;
- Granting of accreditation under selective conditions;
- Accreditation as a mechanism of control over the content;
- Arbitrary application of accreditation procedures;
- Restrictions as a symmetrical response.

# Observations on the proposed legislation in Tajikistan

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ARTICLE 19 finds that the proposed accreditation rules are incompatible with international standards on freedom of expression outlined above. If the Regulation is adopted, it will severely restrict access of foreign journalists to Tajikistan and their ability to perform their essential function without interference. As a result, the plurality of media and information sources in the country will diminish. An indispensable element of the right to freedom of expression—the right of the public to be informed on issues of public interest—will be significantly restricted as well.

ARTICLE 19 highlights the following issues with the draft Regulation:

## ***Lack of independence of the accrediting body***

The proposed Regulation indicates that the Ministry of Foreign Affairs is the accrediting body. This defies the requirement that an independent body, not controlled or subordinated by the government, should review accreditation requests in a transparent and independent procedure.

Tasking the Ministry – a state institution – with accreditation goes beyond what is generally recognised as necessary to safeguard public interest. Instead, accreditation of journalists should be done by independent body – ideally by an association of journalists.

## ***Definition of a journalist***

The draft Regulation makes accreditation conditional upon a formal contractual relationship between the journalist and a media outlet. ARTICLE 19 finds that this approach does not reflect the contemporary understanding of journalism.

We note that under international freedom of expression standards, journalism is considered a function, rather than a regulated profession. For instance, the Human Rights Committee, in its General Comment No 34, stated that:

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.<sup>9</sup>

Other human rights bodies have also formulated a very wide definition of ‘journalist’, covering anyone who serves as a conduit of information to the public, regardless of whether they would

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<sup>9</sup> General Comment No. 34, *op.cit.*, para 44.



normally be perceived as ‘professional’ journalists. For instance, the Council of Europe Committee of Ministers stated that

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.<sup>10</sup>

For the same reasons, the Inter-American Court of Human Rights rejected licensing schemes for journalists and placing any requirements on journalists to join a particular association.<sup>11</sup>

The draft Regulation violates these standards. Accreditation should be open to any persons performing a journalistic function, including freelancers or bloggers.

### ***Accreditation as permission and a work permit***

In defiance of international standards, the draft Regulation treats the system of accreditation as a framework of requirements and procedures that authorise foreign journalists to work in Tajikistan. In other words, without valid accreditation, foreign journalists cannot perform any journalistic functions, essentially subjecting them to obtaining a permit.

ARTICLE 19 highlights that accreditation should not function as a work permit. It can only be necessary for access to specific physical locations, where there are objective space limitations or safety concerns. Instead, the proposed system treats the entire territory of Tajikistan as a restricted zone. Further, one specific provision stipulates that accreditation does not grant access to “places and objects access to which requires a separate permit” (rule 26). As such, the rules de facto establish a multi-tier accreditation system, which severely restricts access to information and interferes with the essential functions of the press.

### ***Accreditation as a precondition for a visa***

The draft Regulation makes obtaining a visa to enter Tajikistan conditional upon a successful decision on accreditation (rule 41).

ARTICLE 19 finds this to be an impermissible restriction. Accreditation should not be a precondition to obtain a visa or to enter a country. Coupled with onerous bureaucratic requirements, unreasonable waiting times, and other restrictions, the conditionality of visas upon accreditation will effectively make it impossible or excessively difficult for foreign journalists to perform their functions in Tajikistan. On the contrary, accreditation rules should guarantee the prompt receipt of multiple entry visas for accredited foreign journalists. For permanently accredited foreign journalists, multiple long-term visas should be guaranteed in accreditation rules.

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<sup>10</sup> 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 8 March 2000.

### ***Excessive requirements***

Under the draft Regulation, the requests for accreditation in Tajikistan, even for a temporary one, must be accompanied with an extensive list of mandatory documents (rule 7). These include, for example, a blood test and medical certificate, and the stamp and signature of the journalist's supervisor.

Moreover, the prolongation of an already issued accreditation card requires a separate procedure with a number of formal conditions (rule 14).

Permanent accreditation includes yet more onerous requirements, including a criminal record certificate, a state registration certificate, and the statutory documents of the media outlet.

ARTICLE observes that many of these requirements are clearly unnecessary and excessive. We note that typically, the reasons for accreditation is to prevent overcrowding in the press gallery in large institutions, such as the national parliament or in courts or in places where the audience exceeds the number of seats available. There is no reason why access to these places should be conditioned on medical certification or supervisor's approval.

We believe that these excessive requirements should be eliminated, as they will easily turn into an abusive instrument of selective accreditations. Essentially, the complexity of these burdensome requirements is akin to that of a procedure to obtain a work permit, which is not acceptable in an accreditation scheme.

### ***Content-related conditions***

Several requirements of the application for accreditation in the draft Regulation are content-related. For example, the requirements to provide the 'script of the film', 'reporter's biography', and 'information about the journalistic activity of the reporter' would allow the authorities to assess the content of previous and intended reporting. The draft Regulation states that the failure to provide these documents will mean that the Ministry of Foreign Affairs of Tajikistan will not even consider the application (rule 7).

The prolongation of accreditation for a foreign journalist is made contingent upon the disclosure of his or her previous publications (rule 14).

Separately, another convoluted and vague rule mandates that foreign reporters notify the Ministry of Foreign Affairs of Tajikistan of publications under their real name or pseudonym and receive 'a signature' (rule 17). Several provisions limit the journalist's right to work for or contribute to multiple media outlets (rules 18 and 21).

ARTICLE 19 finds these requirements to be impermissible limitations and a form of censorship or at least the attempt of the state to control the media. There is no reasonable justification for requiring them. We reiterate that decisions to grant, extend, or withdraw accreditation must never be based on the content of the journalistic activity. Foreign journalists should never be required to provide detailed descriptions of their publications or specify the purpose of their visit.

### ***Excessive waiting period***

The period of **at least** one month is fixed as a waiting period in the legislation both for ‘temporary’ and ‘permanent’ accreditation (rules 9-10). No explanation is provided as to why accreditation cannot be provided sooner than a month.

The implementation of the proposed rules will significantly interfere with journalist’s ability to perform their inherent function. The nature of journalistic work requires swift and timely access to relevant information and physical sites to be able to inform the public effectively. Further, despite the ordinary meaning of the word, ‘permanent’ accreditation is only interpreted by the draft accreditation rules to mean a period of **up to** one year.

ARTICLE 19 believes that if accreditation is done by independent journalistic bodies, their rules can specify the maximum time in which they should reply to an accreditation request. This deadline should be reasonable and much shorter than a month.

### ***Arbitrary withdrawal without explanation***

The draft Regulation allows the authorities to withdraw accreditation or suspend it without providing any reason or justification to the reporter (rule 16).

ARTICLE 19 stresses that refusals for accreditation and withdrawals of the accreditation (which should not be done by an authority subordinated to the government) should be based on transparent, objective, and non-discriminatory criteria. Accreditation refusals amount to extreme measures and should not serve as sanctions for professional activities or content. Again, we reiterate that accreditation may be necessary only for foreign journalists who wish to access specific venues with limited space or zones closed for safety reasons, or if they wish to receive extra privileges, such as multiple-entry visas. In any event, accreditation rules should oblige an accrediting body to provide the reasons for accreditation refusals or withdrawals.

### ***Sanctions for journalism without accreditation***

A particularly concerning provision (rule 20 of the draft Regulation) imposes sanctions on foreign journalists who conduct journalistic activities without valid accreditation.

ARTICLE 19 finds this to be a severe attack on the right to freedom of expression. Blanket sanctions for journalistic activity constitute an impermissible restriction that manifestly fails to satisfy the three-tier test under Article 19 of the ICCPR. This abusive interpretation of accreditation as a permission, or even a sanction, is incompatible with international standards.

### ***Restrictions as a symmetrical response***

The draft Regulation grants the Ministry of Foreign Affairs the power to adopt “countermeasures” against journalists “representing media of foreign states in which the activity of journalists originating from the Republic of Tajikistan is restricted” (rule 19).

ARTICLE 19 finds this to be a vaguely formulated and overreaching provision that is incompatible with freedom of expression. The rule is an example of an openly discriminatory accreditation policy. Journalists are not representatives of states and should not suffer retaliation on the basis of their national origin.

### ***Conclusions***

In summary, ARTICLE 19 finds that the proposed Regulation approaches accreditation as a system of permissions and sanctions rather than a means of facilitating media access, cultivating an open information environment, and supporting an uninhibited debate on issues of public interest.

As such, ARTICLE 19 urges the Government to withdraw the proposal in its entirety and refrain from introducing similar regulations in the future.

## About ARTICLE 19

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

On the basis of this publications and ARTICLE 19's overall legal expertise, the organisation published a number of legal analysis each year, comment 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 effort 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 discuss this analysis further, or if you a matter you would like to bring to the attention of the ARTICLE 19 Law and Policy Team, you can contact us by email at [legal@article19.org](mailto:legal@article19.org). For more information about ARTICLE 19's work in Europe, contact the Europe and Central Asia Team at [europe@article19.org](mailto:europe@article19.org).