

Executive Summary

1. In this submission, ARTICLE 19 and Adil Soz highlight concerns relating to the right to freedom of expression and information in several key areas:
 - Legal framework for free expression;
 - Restrictions on freedom of expression online;
 - Blocking and closure of media outlets;
 - Safety of Journalists;
 - Right to Information.
2. In the period under review, the situation for the rights to freedom of expression and information has deteriorated in Kazakhstan. The Government of Kazakhstan has sought to position itself as a key political player in Central Asia and internationally, while continuing to introduce restrictive measures to silence critical voices nationally. While the Constitution provides for freedom of expression, the government has repeatedly harassed or shut down independent outlets. Defamation is a criminal offense, and the criminal code prohibits “insulting” the president. The authorities engage in periodic blocking of online news sources and social media platforms. The closure of Kazakhstan’s remaining independent and opposition media outlets and the paralysing restrictions on civil society organisations’ registration, activities and financing have obstructed the work of journalists and human rights defenders, and been accompanied by targeted harassment.

Legal Framework for Freedom of Expression

3. In 2014, Kazakhstan received 21 recommendations focused on bringing national legislation and practice in line with international freedom of expression obligations. These included recommendations accepted on the erroneous basis that they were “already being implemented”, including on reforming incitement legislation,¹ creating an enabling environment for freedom of expression and freedom of the media,² bringing all relevant legislation on freedom of expression in line with international standards,³ ceasing to block or restrict the work of media outlets,⁴ ensuring the protection of journalists,⁵ and on decriminalising defamation, insult, libel and slander.⁶ Recommendations noted by Kazakhstan included calls to decriminalise defamation, libel, insult and slander,⁷ to amend the 2013 Communications Law on ‘social emergency’,⁸ to bring legislation in line with international standards more broadly,⁹ and to ensure journalists and activists can work peacefully and without fear of reprisals.¹⁰
4. Regrettably, none of these recommendations have been implemented. Instead, a number of repressive laws and provisions were enacted, further restricting the enjoyment of fundamental rights and freedoms. Both new and existing laws have been wielded by authorities in crackdowns on media, civil society and political opponents.
5. Article 20 of the Constitution of the Republic of Kazakhstan relates to the right to freedom of speech and information, providing that:
 1. Freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited.
 2. Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.
 3. Propaganda or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, and clannish superiority as well as the cult of cruelty and violence, shall not be allowed.¹¹

¹ Article 164 of the Criminal Code (now Article 174): 124.4 (Brazil); 124.5 (Chile)

² 124.22 (Uruguay); 124.28 (Italy); 124.29 (Japan); 124.30 (France)

³ 124.24 (Latvia); 124.25 (Austria);

⁴ 124.26 (Sweden); 124.39 (Norway)

⁵ 124.27 (Czech Republic)

⁶ 124.47 (Australia)

⁷ 126.35 (Czech Republic); 126.38 (Finland); 126.39 (Hungary); 126.40 (United States of America); 126.41 (Ireland)

⁸ 126.37 (Finland);

⁹ 126.36 (Estonia); 126.42 (Slovenia)

¹⁰ 126.46 (Belgium)

¹¹ http://www.akorda.kz/ru/official_documents/constitution

6. This Constitutional guarantee is out of step with the requirements of Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 20(2) of the Constitution only guarantees freedom of expression to the extent the exercise of the right complies with national law, failing to require those laws to meet the requirements of legality, legitimate aim, and necessity and proportionality, as set out in Article 19(3) of the ICCPR. Article 20(3) of the Constitution is similarly flawed, providing further grounds for limiting freedom of expression not recognized in international human rights law, imitating but failing to accurately capture the States obligation to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to hostility, discrimination or violence. Both parts allow the government to claim the targeting and suppression of criticism is in conformity with the Constitution, regardless of the incompatibility of these provisions with international human rights law.

Restrictions on freedom of expression in the criminal and civil code

7. Kazakhstan's new Criminal Code,¹² – which came into force in 2015 and was further amended during 2015 and 2018, retains various criminal defamation, insult and “false information” provisions, which are actively applied against journalists and media organisations who are perceived to criticise the government law:¹³
- **Article 130** criminalises **defamation**, with the available punishment depending on the mode of its communication. The most serious cases – involving accusations of a serious crime – is punishable by a fine, correctional labour and restriction of liberty for up to three years, or imprisonment of up to three years. International standards are clear that defamation offences should be decriminalised, in favour of civil remedies.
 - **Article 131** broadly criminalises **insult**, which, if committed through the media is punishable by a fine, correctional labour or up to 180 hours' community service. The right to freedom of expression protects expression others may find offensive, and critical expression, and as such should “insult” should not be subject to restriction. This provision is particularly liable to abuse to restrict critical expression which should be protected under international human rights law, as there is no protection provided for expression that is truthful, or in the public interest, and the threshold of “harm” is entirely subjective.
8. Several provisions in the Criminal Code aim to provide **special protections to public officials** that act to insulate them from criticism, contrary to international standards which are clear that all public officials, including of the highest rank, should have to tolerate more, rather than less, criticism than ordinary citizens, since they are directly involved in matters of public concern. The problematic provisions include:
- **Article 376**,¹⁴ prohibits public insult of MPs using the mass media, or telecommunications networks, punishable by a fine, correctional labour, restriction of liberty for up to two years or imprisonment of up to two years;
 - **Article 378**,¹⁵ prohibits ‘insulting a government official in the performance of his/her duties’, punishable by a fine, correctional labour, community service of up to 80 hours, or up to 20 days' imprisonment, increasing to a maximum of 40 days' imprisonment where it is committed publicly, on the Internet, media or other form of telecommunications;

¹² https://online.zakon.kz/m/Document/?doc_id=31575252

¹³ No 226-V (3 July 2014 – with amendments and additions as of 21.01.2019) of the *Criminal Code of the Republic of Kazakhstan*. (2019) [Online]. Available in Russian from: http://online.zakon.kz/Document/?doc_id=31575252

¹⁴ Article 376. Infringement on honour and dignity of the deputy of the Parliament of the Republic of Kazakhstan and interfering with his (her) activity: 1. Public insult of the deputy of the Parliament of the Republic of Kazakhstan upon performance by him (her) the parliamentary duties or in connection of their performance – shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or arrest for the term of up to fifty days; 2. The same action, committed with the use of mass media or information and communication networks, - shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to two years, or imprisonment for the same term; 3. Impact on the deputy of the Parliament of the Republic of Kazakhstan or his (her) close relatives in any form in order to interfering with performance by him (her) of his (her) duties – shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to three years, or imprisonment for the same term; Note. Public performances, containing criticisms on parliamentary activity of the deputy of the Parliament of the Republic of Kazakhstan shall not entail criminal responsibility under this Article.

¹⁵ Article 378. Insult of representative of authority: 1. Insult of representative of authority upon performance by him (her) of his (her) duties or in connection with their performance – shall be punished by the fine in the amount of up to eighty monthly calculation indices or correctional works in the same amount, or community services for the term of up to eighty hours, or arrest for the term of up to twenty days; 2. The same action, committed publicly or with the use of mass media or information and communication networks, - shall be punished by the fine in the amount of up to one hundred and sixty monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and sixty hours, or arrest for the term of up to forty days; Note. Public performances, containing criticisms on official activity of the representative of authority shall not entail criminal responsibility under this Article.

- **Articles 373,¹⁶ and 375,¹⁷** impose criminal liability for expression which infringes ‘upon the honour and dignity of the President’ or obstruction of the President’s activities. The crime is punishable by a fine, correctional labour, restriction of liberty or imprisonment for up to two years; the maximum custodial sentence increases to three years where insult is committed through the mass media, or telecommunications networks.¹⁸
- **Article 274,¹⁹** criminalises the “dissemination of information that is known to be false”, punishable by up to 5 years’ imprisonment, and up to 7 years’ if the information creates a risk of disturbance to public peace, causes substantial harm to the rights of others, or the interests of society or the state.²⁰ This vaguely worded provision grants the authorities broad discretion to target expression that they dispute the veracity of, or simply do not like — and has been used against civil society activists and journalists. Empowering the authorities to police the truth in this manner has a significant chilling effect on media freedom in particular.

9. Since the previous cycle, criminal defamation cases have been brought against journalists and media outlets, including *Nakanune.kz*.²¹ On 23 May 2016, Guzyal Baydalina, owner of the independent investigative news website, *Nakanune.kz*, was found guilty under Article 274. The charge was made following the website’s publication of a series of articles concerning KazKommertsbank that the bank considered to be defamatory. *Nakanune.kz* is well-known for its investigative journalism around corruption and alleged in its articles that KazKommertsbank committed corrupt and unlawful acts. The court sentenced Baydalina to 18 months’ imprisonment and she was ordered to pay the bank compensation of over 144 million Kazakh Tenge (over 400,000 US Dollars). Although Baydalina’s prison sentence was later commuted and her fine was reduced, this case demonstrates the possible application of criminal defamation law with disproportionate punishment to intimidate critical media.²²
10. Despite Kazakhstan’s acceptance of a recommendation to amend civil defamation legislation and to reduce fines against media outlets, civil defamation cases with exorbitantly high levels of damages continue to be widely used against independent media.²³

¹⁶ Article 373. Public insult and other infringement on honour and dignity of the First President of the Republic of Kazakhstan - Leader of the Nation, desecration of images of the First President of the Republic of Kazakhstan – Leader of the Nation, interfering with legal activity of the First President of the Republic of Kazakhstan – Leader of the Nation: 1. Public insult and other infringement on honour and dignity of the First President of the Republic of Kazakhstan - Leader of the Nation, desecration of images of the First President of the Republic of Kazakhstan – Leader of the Nation – shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to two years, or imprisonment for the same term; 2. The same actions, committed with the use of mass media or information and communication networks, - shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to three years, or imprisonment for the same term; 3. Impact on the First President of the Republic of Kazakhstan – Leader of the Nation or family members, living together, in any form in order to interfering with his legal activity – shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term.

¹⁷ Article 375. Infringement on honour and dignity of the President of the Republic of Kazakhstan and interfering with his (her) activity: 1. Public insult and other infringement on honour and dignity of the President of the Republic of Kazakhstan – shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to two years, or imprisonment for the same term; 2. The same action, committed with the use of mass media or information and communication networks, - shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to three years, or imprisonment for the same term; 3. Impact on the President of the Republic of Kazakhstan or his (her) close relatives in any form in order to interfering with performance by him (her) of his (her) duties – shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term; Note. Public performances, containing criticisms on policy conducted by the President of the Republic of Kazakhstan shall not entail criminal responsibility under this Article.

¹⁸ Griffen, S. and Trionfi, B. (ed.) (2017) *Defamation and Insult Laws in the OSCE Region: A Comparative Study*. [Online]. Commissioned by the OSCE Representative on Freedom of the Media. Available from: <http://www.osce.org/fom/303181> pp.129-130

¹⁹ Article 274. Dissemination of knowingly false information: 1. Dissemination of knowingly false information, creating a danger of violation of public order or infliction of substantial harm to the rights and legal interests of citizens or organization or the interests of society or the state, protected by the Law, - shall be punished by the fine in the amount of up to one thousand monthly calculation indices or correctional works in the same amount, community service of up to 400 hours, restriction of liberty for the term of up to one year, or imprisonment for the same term; 2. The same action, committed: 1) by group of persons on prior conspiracy; 2) by person through the use of his (her) official position; 3) with the use of mass media or information and communication networks, - shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, community service of up to eight hundred hours, restriction of liberty for the term of up to three years, or imprisonment for the same term; 3. The actions, provided by first or second parts of this Article, entailed infliction of heavy damage to the citizen, organization or the state or other grave consequences, - shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, community service of up to 1200 hours, restriction of liberty for up to five years, or imprisonment for the same term; 4. The actions, provided by first, second or third parts of this Article, committed: 1) by criminal group; 2) in the conditions of emergency situation or in the face of the enemy, or in time of war, or during public events -shall be punished by imprisonment for the term of three to seven years.

²⁰ Griffen, S. and Trionfi, B. (ed.) (2017) *Defamation and Insult Laws in the OSCE Region: A Comparative Study*. [Online]. Commissioned by the OSCE Representative on Freedom of the Media. Available from: <http://www.osce.org/fom/303181> p.133

²¹ ARTICLE 19 (2016) Kazakhstan: Release Head of investigative journalism website, *Nakanune.kz*. [Online]. Available from: <http://www.article19.org/resources/kazakhstan-release-head-of-investigative-journalism-website-nakanune-kz/>

²² ARTICLE 19 (2016) Kazakhstan: Release Head of investigative journalism website, *Nakanune.kz*. [Online]. Available from: <http://www.article19.org/resources/kazakhstan-release-head-of-investigative-journalism-website-nakanune-kz/> [Accessed 24 January 2018]

²³ 126.40 (United States of America)

11. **Article 143 of the Civil Code**,²⁴ provides for “the protection of honour dignity and reputation.” The law is problematic for free expression for several reasons. First, it does not take into account that statements of public interest justify higher protection, even if those statements cause harm to a person’s reputation. Second, it does not provide for defence of reasonable publication, to allow for honest mistakes where reasonable steps were taken to verify the information and publication was in the public interest. Finally, the Civil Code contradicts international law because it fails to distinguish opinions from statements of fact, making it possible to punish people for unfavourable or negative opinions.
12. Civil defamation lawsuits are frequently brought against journalists and publications to silence criticism, even more frequently than criminal prosecutions. They most often result in defendants being forced to pay large sums of money in damages. Defamation through the mass media are punished more severely, including with orders for payment of hundreds of thousands of dollars. On 4 April 2017, Ratel.kz was ordered by the Medeu Regional Court in Almaty, Kazakhstan, to pay over 50 million Kazakh Tenge (over 150,000 US Dollars) in moral damages, following a civil defamation lawsuit raised against them by former Minister of Finance, Zeynulla Kakimzhanov.²⁵
13. The mere existence of all the above-mentioned provisions – and the harsh penalties available in particular when committed through mass media or telecommunications networks – has a severe chilling effect on freedom of expression in the country, in particular online expression and media freedom. This undermines the free flow of information in the country, by deterring journalists from reporting on matters of the utmost public interest: coverage of government, its policies and practices, and any wrong-doing, as well as on high-profile public officials and public figures, and their activities.
14. **Article 174** of Kazakhstan’s Criminal Code²⁶ is the most commonly used article against civil society activists in Kazakhstan, at the same time, the provision fails to provide genuine protection to individuals from minority groups.²⁷ The provision broadly criminalises incitement of hatred on extremely vague grounds.²⁸
15. If convicted under Article 174, individuals face restrictions on their liberty or imprisonment for two to seven years. An individual who is a leader of a public association, or groups, who are convicted under Article 174, face more severe punishment of five to ten years’ imprisonment as well as a temporary ban on holding specified positions, or engaging in specified activities for up to three years. This element appears oriented towards enabling the authorities to target civil society groups, and activists, with judicial harassment and obstruct them from carrying out their work.
16. ARTICLE 19 has previously criticised the provisions of Article 174 of the Criminal Code on incitement to “social, national, ethnic, racial, class or religious hatred”, for failing to meet international freedom of expression standards.²⁹ **Article 174** does not reflect the requirements of the ICCPR, set out in Article 19(3) or Article 20(2), in particular:

²⁴ Available at: https://online.zakon.kz/document/?doc_id=1006061. Article 143. Protection of honor, dignity and business reputation: 1. A citizen shall have the right to demand in a court of law a refutation of information discrediting his honor, dignity or business reputation; 2. If information discrediting the honor, dignity or business reputation of a citizen or a legal entity is disseminated in the mass media, it should be refuted free of charge in the same mass media. If the specified information is contained in a document originating from the organization, such document shall be replaced or revoked with a mandatory message to the addressees about the inconsistency of the information contained in this document.

²⁵ Adil Soz (2017) *According to court decision, Ratel.kz and Forbes.kz to pay the Kakimzhanovs over 50 million Tenge*. [Online]. Available in Russian from: <http://www.adilsoz.kz/news/show/id/2313> [Accessed 16 January 2018]

²⁶ No 226-V (3 July 2014 – with amendments and additions as of 21.01.2019) of the *Criminal Code of the Republic of Kazakhstan*. (2019) [Online]. Available in Russian from: http://online.zakon.kz/Document/?doc_id=31575252

²⁷ Griffen, S. and Trionfi, B. (ed.) (2017) *Defamation and Insult Laws in the OSCE Region: A Comparative Study*. [Online]. Commissioned by the OSCE Representative on Freedom of the Media. Available from: <http://www.osce.org/fom/303181> p.132

²⁸ Article 174. Institution of social, national, generic, racial, class or religious discord: 1. Intentional actions, directed to institution of social, national, generic, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, generic or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, generic, racial, class or religious discord, - shall be punished by restriction of liberty for the term of two to seven years or imprisonment for the same term; 2. The same actions, committed by group of persons, group of persons on previous concert or repeatedly or connected with violence or threat of its use, as well as committed by person with the use of his (her) official position or leader of a public association, - shall be punished by imprisonment for the term of five to ten years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it; 3. The actions, provided by first or second parts of this Article, committed by criminal group or entailed the grave consequences, - shall be punished by imprisonment for the term of twelve to twenty years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.

²⁹ <https://www.article19.org/data/files/medialibrary/37124/Brief-Draft-Criminal-Code.pdf>

- It provides for the limitation of the right to freedom of expression on extremely vague and subjective grounds not recognised by human rights law – referring for example, to undefined terms such as “discord”, and “insult to national honour and dignity or religious feelings”, and “propaganda of exclusivity, superiority, or inferiority of citizens” – and as such additionally fails to provide legal certainty to enable individuals to regulate their conduct accordingly. Moreover, it does not comply with the requirement that restrictions be proportionate.
- The definition of incitement to hatred does not align with that Article 20(2), which requires States to prohibit ‘*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*’. We note that what constitutes incitement under Article 174 is extremely imprecise, and reiterate that according to international standards, to judge what expression should be prohibited as incitement, regard should be had to the following six elements: the general context, the speaker, intent, content of the message or its form, the extent of the speech at issue and the likelihood of harm occurring, including its imminence.
- It makes reference to characteristics requiring specific protection by States, which are not found in Article 20(2). The prohibition of incitement to social hatred implies protection of “social groups” and “classes.” While the protected grounds of national, racial or religious hatred found in Article 20(2) ICCPR may not be exhaustive, the list of protected characteristics should be considered in light of the right to non-discrimination as provided under Article 2(1) and Article 26 of the ICCPR. Although both have been interpreted expansively to include characteristics such as sexual orientation, gender identity, and disability, the criteria for differentiation should be objectively justified and reasonable. We find that the belonging to a social group or class is not an objectively justifiable and reasonable criterion. Unlike nationality, disability or ethnic origin, for example, “social group” and “class” are vague categories and difficult to legally define, opening them up to arbitrary application.

17. Since the previous UPR, Article 174 has been used on numerous occasions to target journalists and human rights defenders,³⁰ including against well-known environmental rights activists, Talgat Ayanov and Max Bokayev.³¹ In April and May 2016, Ayanov and Bokayev were involved in peaceful protests in the city of Atyrau, which were part of nationwide demonstrations against amendments to the Land Code.³² Following the protests, the Kazakh authorities launched a nationwide wave of arrests of activists involved in the protests on a range of minor criminal and administrative charges. On 28 November 2016, Court Number Two in Atyrau, western Kazakhstan, sentenced Ayanov and Bokayev to five years’ imprisonment and significant fines, on charges of “incitement to social unrest,” spreading “false information”, and violating the law on public assemblies.³³ In its 2017 decision, the UN Working Group on Arbitrary Detention held that “the detention of Mr. Bokayev and Mr. Ayanov was due to their exercise of the rights to freedom of expression and freedom of assembly and was contrary to Article 26 of the Covenant.”³⁴
18. Many of the cases prosecuted under Article 174 are held in closed courts, raising significant concerns about fair trials and due process violations, in the absence of open justice. The application of Article 174 against journalists, activists and civil society groups, is demonstrative of its failure to adequately protect freedom of expression and information and the need for urgent reform. The broadly-worded nature of this provision has had a chilling effect on freedom of expression with many journalists self-censoring when writing about issues such as a religious groups, out of fear they could be persecuted under this legislation.³⁵
19. Amendments to counter-terrorism and extremism-related legislation took effect in January 2017.³⁶ These vague provisions are open to misuse to limit and silence legitimate reporting on terrorism and terrorist groups, as well as to criticism of the state. They include:
- **Article 256**,³⁷ of Kazakhstan’s Criminal Code criminalises ‘propaganda of terrorism or public calls for commission of an act of terrorism’ in extremely general terms, that render it liable to arbitrary application to silence legitimate

³⁰ <https://www.rferl.org/a/qishloq-ovozi-kazakhstan-article-174/27527738.html>

³¹ <https://www.article19.org/resources/kazakhstan-land-reform-protesters-must-be-released/>

³² The amendments increased the term for which foreigners can rent state-owned agricultural land from 10 to 25 years, stoking popular fears that Chinese companies would be allowed to take over local farmland. The amendments were signed into law in November 2015 and would have been effective from 1 July 2016; however, in a rare moment of acquiescence to public opinion following the protests, President Nursultan Nazarbayev imposed a moratorium, postponing the implementation of the amendments until 2017: <https://www.article19.org/resources/kazakhstan-land-reform-protesters-must-be-released/>

³³ <https://www.article19.org/resources/kazakhstan-land-reform-protesters-must-be-released/>

³⁴ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_16.pdf

³⁵ <http://lmc.kz/ru/news/gulmira-birzhanova-smi-kazahstana-opasayutsya-pisat-na-temu-terrorizmu-i-ekstremizmu>

³⁶ https://online.zakon.kz/Document/?doc_id=30004865

³⁷ Article 256. Propaganda of terrorism or public calls to commit an act of terrorism: 1. Propaganda of terrorism or public calls to commit an act of terrorism, as well as making, storing for the purpose of distributing or disseminating materials of the indicated content - shall be punished with confiscation of property; 2. The

expression. The crime carries a jail sentence of five to ten years and confiscation of property. We note that international standards require that criminal measures for tackling terrorism or ‘extremism’ draw a direct and immediate connection between the action – including an expressive act – and the actual (i.e. objective) risk of terrorist acts being committed as a result; require the inclusion of the element of *intent* to incite terrorist acts; and must be applicable only to acts of a genuine ‘terrorist’ nature. The broad nature of Article 256 enables its abusive application against the media and journalists. For example, on 21 October 2018, Almaty District Court ruled in a case, referred to as the “jihadist-case” in the media in Kazakhstan. Journalist, Oralbek Omyrov, activist Almat Zhumagulov and poet Kenzhebek Abishev were arrested in late 2017 and charged under Article 256. Zhumagulov and Omyrov were sentenced to eight years’ imprisonment, and Abishev was sentenced to seven years.³⁸

- **Article 180**³⁹ criminalising ‘propaganda or public calls for violation of the integrity of the Republic of Kazakhstan’, in similarly general terms, and also absent the requirement of intent, and a direct link between the expressive conduct and the risk of clearly defined, unlawful acts being committed, enabling the provision to be applied to expression which is lawful under international law. The crime carries a jail sentence of up to seven years and a fine.

20. These vague provisions encourage self-censorship in order to avoid judicial harassment, in particular among the media and its coverage of terrorist acts and terrorist groups; the media plays a crucial role in informing the public about such matters and we note its capacity to operate should not be unduly restricted by the legal framework.

Recommendations

- Reform the Constitution, in particular Article 20, to fully protect freedom of expression, in line with Article 19 of the ICCPR;
- Fully decriminalise defamation by repealing the remaining defamation and insult provisions from the Criminal Code;
- Reform the Civil Code in relation to civil defamation laws, to introduce defences for truth and fair comment, guard against malicious law suits, and introduce a cap on compensation awards to ensure that damages are proportionate to the harm caused to an individual’s reputation;
- Reform provisions on “incitement to hatred” to ensure compliance with Articles 19(3) and 20(2) of the ICCPR, and in accordance with the Rabat Plan of Action, to ensure the provisions are not abused to target legitimate expression.

Restrictions on Freedom of Expression Online

21. During its last UPR, the Government of Kazakhstan did not accept a recommendation related to ensuring freedom of expression online,⁴⁰ and restrictions on freedom of expression online have intensified in the period under review.

22. The restrictions on free expression contained in the Criminal Code, outlined above, are routinely applied in relation to online expression. Frequently individuals convicted for online expression are subject to the harshest sentences available, as they are considered to have committed their offence through telecommunications channels, or through the ‘mass media’. In accordance with the law “On Changes and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Information and Communication Networks” (Internet Law), adopted in 2009,⁴¹ blogs, social media networks and chat rooms are also considered ‘mass media’. As a result, individuals who post through these channels, and are subject to prosecution under the abovementioned provisions, risk the application of the most severe sentences available.

same acts committed by a person using his official position either by the leader of a public association, or by using mass media or telecommunications networks, or by a group of persons or a group of persons by prior agreement, including using funds received from foreign sources, - is punishable by imprisonment for a term of seven to twelve years with confiscation of property.

³⁸ <https://www.iphronline.org/kazakhstan-reinforced-authoritarianism-sentencing-of-opposition-activists-surveillance-of-citizens.html>

³⁹ Article 180. Separatist activities: 1. Propaganda or public calls for violation of unitarity and integrity of the Republic of Kazakhstan, inviolability and inalienability of its territory or disintegration of the state, as well as production, storage for the purpose of distribution or distribution of materials of such content - shall be punished with a fine of one thousand up to five thousand monthly calculation indices either by restriction of freedom for a period of up to seven years, or imprisonment for the same period; 2. The same actions committed by a person using his official position either by the leader of a public association, or using media or telecommunications networks, or a group of persons or a group of persons by prior agreement, including using funds received from foreign sources, - is punished by imprisonment for the term from five up to ten years; 3. Actions committed with the aim of violating the unitarity and integrity of the Republic of Kazakhstan, the inviolability and inalienability of its territory or the disintegration of the state - shall be punished with imprisonment for a term of ten to fifteen years with or without the deprivation of citizenship of the Republic of Kazakhstan.

⁴⁰ 126.36 (Estonia)

⁴¹ Law of the Republic of Kazakhstan from 10 July 2009 No 178-IV “Changes and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Information and Communication Networks»

23. A recommendation urging the government of Kazakhstan to amend the 2013 Communications Law was also noted.⁴² The law introduced the concept of “social emergency” to restrict legitimate expression. Since, additional legislation using “social emergency” to justify restrictions has also been introduced: On 25 October 2018, Prime Minister of Kazakhstan B. Sagintayev signed into law a further decree approving the list of government agencies empowered to suspend communications networks – in coordination with the authorised body – in the event of a state of emergency.⁴³ These agencies include: the General Prosecutor's Office of the Republic of Kazakhstan; the National Security Committee of the Republic of Kazakhstan; the Ministry of Internal Affairs of the Republic of Kazakhstan; and the Ministry of Defense of the Republic of Kazakhstan. The amendments raise concerns that the government could severely restrict access to information in the public interest.
24. Court proceedings necessary to block access to websites, especially foreign ones, have been significantly simplified in Kazakhstan following the introduction of the Internet Law, and recent changes to the code of civil procedure. Courts are able to hear cases related to blocking requests in the absence of the defendant, the website owner. The website owner, in turn, receives no notification about the launch of court proceedings, the court decision or appellate procedure and as such, is unable to provide any defense to prevent the take-down order coming into effect. The law fails to provide a procedure for reinstating websites after their court-ordered suspension has expired.
25. In practice, the blocking of websites often occurs before a court decision⁴⁴ and the process through which blocking decisions are made is not transparent. Since the previous cycle, numerous media outlets have had their websites blocked, including *ng.kz*,⁴⁵ *Ratel.kz*,⁴⁶ and *ADAM bol*.⁴⁷

Recommendations

- Amend the 2013 Communications Law and 2018 Decree No 347 to stop the use of the vaguely defined concept of “social emergency” to suspend or suppress legitimate communications and exchanges of information, or otherwise to limit freedom of opinion and expression.
- Ensure that State mandated blocking of entire websites, IP addresses, ports or network protocols is provided by law and is necessary to protect a human right or other legitimate public interest, is proportionate, and that it respects minimum due process guarantees.

Media Freedom

26. The Government of Kazakhstan is a primary perpetrator of attacks against journalists and the media, through the abuse of the criminal law and politically-motivated charges, and this creates an extremely uncondusive environment for a vibrant, diverse, pluralistic and independent media landscape.
27. Two recommendations from the previous cycle on protection of journalists were accepted,⁴⁸ with one rejected.⁴⁹ However, there have been cases of journalists attacked since the previous cycle, including that of *Ramazan Yesergepov*.⁵⁰ In May 2017, journalist and press freedom activist Yesergepov was stabbed while traveling to discuss press freedom concerns, including the case of Zhanbolat Mamay (below), with foreign diplomats. He later sought refuge in Europe, saying he was expecting to face trumped-up criminal charges.
28. The editor of the independent newspaper *Sayasi Qalam-Tribuna*, Zhanbolat Mamay, was arrested in February 2017 for allegedly laundering money on behalf of exiled banking tycoon Mukhtar Ablyazov. Mamay was convicted in September and sentenced to three years of restricted freedom, a form of probation that would prevent him from engaging in journalism.

⁴² 126.37 (Finland). Ruling of the Parliament of the Republic of Kazakhstan from 31 December 2013 No 1489 “On the provision of networks and communications by telecoms operators in a state of emergency”

⁴³ https://online.zakon.kz/Document/?doc_id=33637028

⁴⁴ <http://www.adilsoz.kz/news/show/id/1534>

⁴⁵ <http://www.adilsoz.kz/news/show/id/2816>; <http://www.adilsoz.kz/news/show/id/2785>

⁴⁶ <https://www.article19.org/resources/kazakhstan-ratel-kz-journalists-detained-website-blocked/>; <http://www.adilsoz.kz/news/show/id/1857>

⁴⁷ <http://www.adilsoz.kz/news/show/id/1852>

⁴⁸ 124.27 (Czech Republic); 124.28 (Italy)

⁴⁹ 126.46 (Belgium)

⁵⁰ <https://www.article19.org/resources/kazakhstan-stabbing-of-journalist-must-be-immediately-investigated/>; <http://www.adilsoz.kz/news/show/id/2351>

29. On 22 February 2016, Kazakhstan's National Anticorruption Bureau arrested Seytkazy Matayev, along with his son, Aset Matayev, director of the KazTAG news agency, in Almaty on suspicion of embezzlement of state funds and tax fraud. A statement released by the Anticorruption Bureau accused Seytkazy Matayev of embezzling 380 million Kazakh Tenge (approx. £750,000) from government funds transferred to the Press Club and KazTAG under an official contract to promote national policies. It also referred to a separate investigation into embezzlement of local government funds. The statement additionally accused Seytkazy Matayev of evading 327 million Tenge (approx. £650,000) in taxes. The detention of the Matayevs was considered to be related to attempts to control the media in the run up to Kazakhstan's parliamentary elections in 2016 and were considered to be politically motivated.⁵¹
30. In February 2019, Kazakhstan's Ministry of Information and Communication announced its intention to amend the legislation regarding accreditation of journalists.⁵² In the draft ministerial order it is proposed to oblige the journalist to provide written consent and copies of documents confirming the existence of a contractual relationship between the journalist and the media. Paragraph 8 of the Rules is to be amended as follows: "8. The decision to deny accreditation of a journalist is made in the following cases: 1) failure to submit the documents specified in paragraph 6 of these rules; 2) inconsistencies in the content of the application with the requirements of these rules; (...); 4) the inability to accommodate journalists in the premises where meetings, meetings and other events are held, subject to accreditation and placement in the premises of other journalists."
31. The draft legislation also proposes expanding the grounds for depriving journalists of accreditation: - in the cases established by paragraph 4 of Article 22 of the law on mass media; - for violation of the internal regulations of the accrediting body and moderator regulations. In the current legislation, an accredited journalist only loses accreditation on the basis of a statement by the owner of the media or by the editors of the owner of the media, as well as a decision of the court, which entered into legal force. Following complaints from journalists regarding the proposed changes, the Ministry opened a public discussion on the draft legislation in March 2019.
32. Under international human rights law, accreditation requirements are only valid to regulate access to meetings where spaces are limited. 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.⁵³ Accreditation should never be used as a work permit for journalists to cover public institutions.

Recommendations

- Reject the draft law on accreditation;
- Provide the utmost protection for the safety of journalists and human rights defenders, and end impunity for attacks, including through conducting thorough and impartial investigations in instances of physical attacks, with a view to bringing those responsible for these violations to justice, and compensating victims and their families, also guaranteeing a right to effective remedy for journalists and human rights defenders;
- Publicly denounce all attacks denigrating journalists, human rights defenders and their organisations which have the sole objective of discrediting them.

Access to Information

33. Kazakhstan has one of the most restrictive Access to Information laws.⁵⁴ In December 2017, the law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Information and Communications" was adopted.⁵⁵ These amendments further limit freedom of expression, receipt and dissemination of information, by increasing the period for providing information at the request of journalists from 3 to 15 days; obliging the journalist to obtain consent from a person or his legal

⁵¹ <https://www.article19.org/resources/kazakhstan-detention-of-head-of-national-press-club-raises-concerns-about-press-freedom/> ;
<http://www.adilsoz.kz/news/show/id/2488>

⁵² <http://www.adilsoz.kz/news/show/id/2846>

⁵⁴ <http://www.adilsoz.kz/news/show/id/2873>

⁵⁵ https://online.zakon.kz/Document/?doc_id=34205812#pos=1;-64

representative for distribution in the mass media of personal, family, medical, banking, commercial and other secrets protected by law and introducing mandatory identification of individuals commenting on messages in the media.

34. In July 2018 the OECD⁵⁶ found that Kazakhstan has made no process on recommendations to bring current Right to Information legislation in line with international standards and to ensure that there is 'an effective independent mechanism of control over compliance with the [...] Law.' In addition, the OECD finds no progress on ensuring appropriate sanctions for violations of Right to Information legislation or providing safeguards to ensure the right to information in the country.
35. As a result, journalists struggle to make use of access to information laws to further investigative journalism and there is limited recourse, or legal support available in case of violations of this legislation. Responses from government bodies are usually evasive, with deliberately insufficient information. Responses are additionally refused frequently on the grounds that the requested information contains state or commercial secrets. In many cases, information in the public interest (state spending and budget lines, for example) is classified as 'secret', in violation of national and international standards.

Recommendation

- Adopt a comprehensive freedom of information law in line with international standards.

⁵⁶ <https://www.oecd.org/corruption/acn/OECD-ACN-4th-Round-Report-Kazakhstan-Progress-Update-July-2018-ENG.pdf>