



**OFFICE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA
LEGAL REVIEW OF THE DRAFT LAW ON MASS-MEDIA
OF THE REPUBLIC OF KAZAKHSTAN**

SUMMARY AND KEY RECOMMENDATIONS

This legal review was prepared upon the request of the Office of the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE RFoM) by Begaim Usenova, a media law expert (Kyrgyzstan), MSc in Media and Communications Regulation (London School of Economics).

The analysis examines the Draft Law's compliance with international human rights standards on freedom of expression and media freedom as well as with the key OSCE human dimension commitments. It consists of the following sections: general considerations; media regulation; public service broadcasting; support measures for non-state media; restrictions of media content, registration, suspension and termination of mass media; journalist's rights and responsibilities; foreign ownership of the media.

On the positive side, the Draft Law provides for *prima facie* voluntary registration of online media outlets, defines and prohibits censorship, establishes deadlines for responses by state bodies to information requests filed by the media and journalists, provides for a statute of limitations on judicial claims against media outlets, and includes provisions that establish accessible remedies for the protection of reputation and can potentially contribute to the development of self-regulatory mechanisms. It also introduces mechanisms for public support of non-state media by providing grants on a competitive basis.

However, a number of provisions of the Draft Law raise concerns because they *prima facie* do not correspond to the generally recognized international standards on freedom of expression and best practices in the OSCE region.

In particular, in the Draft Law, it is necessary to clarify the distinctions between definitions with similar characteristics (mass-media, means of mass information, online media outlets and Internet resources) by eliminating duplications and explicitly limiting each definition's scope of application.

Overall, the Draft Law should provide for a graduated, differentiated and proportionate approach to media regulation that takes into account important differences between various types of media.

On a related note, the Draft Law should also establish clarity regarding the role and functions of state bodies involved in media regulation. Unfortunately, the Draft Law does not currently foresee creation of an independent media regulator. A legitimate media regulatory body should

have political, functional, managerial and financial independence, and its powers should be clearly and exhaustively defined in the law.

Additionally, it is recommended to draft and adopt legislation on public service media, which would guarantee sustainable and adequate funding as well as editorial and institutional independence of public service broadcasting.

The Draft Law should also set out transparent, objective and clear criteria and procedures for receiving state subsidies intended for the media sector. State support for the media should be administered by an institution with sufficient level of autonomy and safeguards against arbitrary political interference.

Some of the restrictions on media content proposed in the Draft Law pose serious threats to freedom of expression as they are not formulated in a narrow, clear and comprehensible way and risk failing proportionality criterion of the tripartite test for permissible restrictions on freedom of expression. For instance, the term "class superiority" may be interpreted and applied too broadly and may eventually lead to the abuse of law. As a general rule, states should refrain from imposing contradictory, unsubstantiated and excessive restrictions on media content.

Legal regulation of media registration should take into account essential characteristics of different types of media. Media registration rules and procedures should be as easy and accessible as possible and should be designed to prevent selective and/or arbitrary decisions by the respective public authority. Adequate legal safeguards against discretionary closure or suspension of media outlets should be included in the Draft Law.

The provisions on the right of reply should be formulated in a more precise manner to ensure media freedom and prevent misuse of these rules. Obtaining a press card should not be a precondition for engaging in journalistic activity. Effective remedies (appeal mechanisms) should be provided in situations of refusal or revocation of press cards to ensure protection of journalists' rights. In principle, it is recommended to consider transferring all authority over and operations with press cards to the independent media self-regulatory bodies. A separate accreditation for foreign journalists may be necessary only if it allows them to obtain additional privileges such as long-term or multiple-entry visas, etc. In general, accreditation should never be used as a restrictive measure but merely as a technical tool to facilitate journalistic work.

In view of the aforementioned considerations, it is also recommended to conduct a comprehensive review of the national legislative framework regulating freedom of expression and media freedom with regard to its compliance with international human rights standards and relevant OSCE commitments, while ensuring that any restrictions imposed on these rights are in full alignment with the requirements stipulated in Article 19(3) and Article 20 of the International Covenant on Civil and Political Rights. This includes, *inter alia*, the definition and legal regulation of hate speech, incitement to violence or terrorism.