



Supplementary Human Dimension Meeting on promotion of freedom of expression: rights, responsibilities and OSCE commitments, Vienna, 3-4 July 2014

Joint statement by Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, Turkmen Initiative for Human Rights and International Partnership for Human Rights

Freedom of expression remains under serious threat in the Central Asian region. Our organizations would like to use this opportunity to draw attention to concerns regarding restrictions on media pluralism, internet censorship, and harassment of journalists and other critical voices in Kazakhstan, Tajikistan and Turkmenistan, as well as to make recommendations to the governments of these countries and the OSCE community at large.

Restrictions on media pluralism

Media pluralism in **Kazakhstan** took a serious blow when a number of leading opposition media were banned by court for alleged “extremist” propaganda in late 2012. Following this the crackdown on opposition newspapers has continued with new apparently politically motivated court decisions. The *Pravdivaya Gazeta* was closed down in February 2014 for mistakes in the use of publishing information, while the *Ashik Alan* was suspended for three months last autumn for failing to inform authorities about staff vacation and now is threatened by closure after being ordered to pay close to 8000 EUR for purported copy right violations. In April 2014, a court shut down the *Assandi Times* for allegedly being linked to the previously banned *Respublika*. In another case seen as pressure on opposition media, police searched the Astana office of the online channel *16/12* in June 2014 and confiscated technical equipment, saying it was part of a money laundering investigation.¹ The recently adopted Administrative Code, which is pending the president’s signature, retains suspension/closure of media as sanctions for violations of a technical nature.

The new media law that took effect in **Tajikistan** in March 2013 introduced strengthened guarantees for the operating freedom of media outlets and journalists, but lacks effective enforcement mechanisms for these provisions.² The new law provides for complicated registration procedures for especially print media, which are required to undergo dual registration, and similarly to in Kazakhstan media outlets may be shut down for administrative violations. For example, in February this year, the registration of the weekly *Khafta* was annulled without warning because it had allegedly published material that was not in line with the direction of its activities set out in its statutes. The weekly had only issued one edition, which featured an interview with a national poet who harshly criticized the authorities.³

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The first ever media law that entered into force in **Turkmenistan** in January 2013 safeguards freedom of the media, prohibits censorship and sets out the objective of ensuring media pluralism. However, in practice the media environment in the country remains fundamentally repressive. Both print and broadcast media continue to be closely controlled by the authorities, which interfere with and dictate editorial policies and use media as means of ideological propaganda to promote a one-sided positive image of the situation in the country. No new media outlets have been registered since the new media law entered into force, and as previously there are no independent media in the country. Access to foreign media is limited, especially because of restrictions on the import of foreign newspapers and internet censorship (see below).

Internet censorship

In **Kazakhstan**, hundreds of internet resources have been blocked by court because of alleged “extremist” or unlawful content in proceedings conducted in a quick fashion behind closed doors. Leading opposition news sites were banned as part of the December 2012 “extremist” rulings (see above). Cases of blocking of websites without a court decision also continue to be reported. In 2013-2014, such measures have affected, among others, news sites such as the Kazakh service of Radio Free Europe/Radio Liberty and the *Uralskaya Nedelya*, and social and online community sites such as Live Journal, Facebook and Avaaz. The news portal *guljan.org* was blocked even after the expiration of a December 2012 court decision, which blocked it for three months for posting information about unsanctioned peaceful protests, and has now stopped working.

In **Tajikistan**, websites are also periodically blocked without a court decision. Such measures are believed to be implemented on the basis of informal government orders to internet providers and particularly affect independent local and foreign news sites and social media sites such as Twitter, Facebook and *Vkontakte*, which have been increasingly used as platforms for political discussion. For example, in December 2013, the government’s communications service reportedly ordered providers to block access to over 100 internet resources, including several social networking sites.⁴ Most recently, in June 2014, Youtube, Gmail and other Google powered services, as well as the Toj News site became unavailable to the customers of most of the country’s providers. As on earlier occasions, the government denied having anything to do with this and blamed the providers. By now access to the sites has been restored.

Internet penetration in **Turkmenistan** is the lowest in the Central Asian region (less than 10% according to available statistics⁵) due to prohibitive costs and the lack of systematic efforts to promote internet access, in spite of promises made by the current president. At the same time, internet traffic continues to be controlled and censored. Foreign-based news sites reporting independently about the situation in the country, the sites of exiled opposition groups and human rights organizations (including the site of Turkmen Initiative for Human Rights, TIHR), social networking sites, and online forums and messaging applications such as WhatsApp and Wechat are among those that have been arbitrarily blocked in the country. Proxy servers used to access sites that are otherwise unavailable are also known to have been blocked.

Harassment of journalists and other critics

In **Kazakhstan**, public officials and figures continue to bring punitive defamation suits involving excessive claims for damages against journalists and media. Recently there have also been a growing number of cases where journalists and other outspoken individuals have been criminally charged with defamation or

“incitement of national, religious or social discord.” In its 2013 monitoring, the Adil Soz free speech foundation documented 82 defamation suits against journalists and media, where the requests for damages totaled 10 million EUR; 16 criminal defamation cases; and four “incitement” cases.⁶ Among those currently facing criminal defamation charges are Natalya Sadykova, an independent journalist who fled the country in March after a case was opened against her over an article she denies writing, and Valery Surganov, editor of www.insiderman.kz who is on trial for his coverage of a court case on kidnapping and rape. The recently adopted Criminal Code, which civil society has urged the president to veto⁷, retains penalties of up to three years in prison for defamation, as well as enhanced protection against libel for the president and government officials. Threats and physical attacks against journalists, which in most cases go unpunished, also remain of serious concern in the country.

In **Tajikistan**, libel was de-criminalized in 2012, but insulting the president and government officials is still subject to criminal liability, which has a chilling impact on free expression. As in Kazakhstan, there is a troubling practice of using defamation suits as a means of retaliation against journalists and media by public officials and figures. In most cases, courts satisfy such suits. For example, in April 2014, an appeal court upheld the conviction against the independent *Asia Plus* newspaper and its editor Olga Tutubalina over an article about the country’s intelligentsia. The National Association of Independent Media in Tajikistan (NANSMIT) documented nine civil and administrative cases and one criminal case against journalists and media in 2013.⁸ Journalists and bloggers addressing corruption and other sensitive issues also face threats, arrests and attacks. In a recent case causing an international outcry⁹, PhD student and blogger Alexander Sodiqov, a Tajik citizen residing in Canada, was arrested in mid-June when conducting research in the city of Khorog. He was held incommunicado for several days before the authorities disclosed his whereabouts and said that a criminal case has been opened against him. He is reportedly suspected of spying.

In **Turkmenistan**, the few local journalists who contribute to independent foreign media, as well as members of civil society who publicly speak up about the situation in the country remain highly vulnerable to intimidation and harassment. Local correspondents for the Prague-based Turkmen service of Radio Free Europe/Radio Liberty (*Azatlyk*) are regularly detained, questioned and obstructed by police in other ways when carrying out their work. Only in December 2013-January 2014, five such incidents were documented.¹⁰ *Azatlyk* contributor Rovshen Yazmuhamedov was held for two weeks without explanation in May 2013 after publishing several articles that generated active discussion on the service’s website. The website of TIHR, a major source of independent information about developments in Turkmenistan, has repeatedly been the target of hacker attacks believed to have been orchestrated by Turkmen security services. Individuals suspected of contributing information to the organization or otherwise perceived to be associated with it have also been subjected to pressure. In a recent example, the brother of TIHR’s head Farid Tuhbatullin was prevented from leaving Turkmenistan in April this year and told that he and his 9-year-old son are on a list of people banned from travelling abroad.¹¹

Recommendations

Recommendations to the governments of Kazakhstan, Tajikistan and Turkmenistan:

- Ensure that legislation affecting the exercise of freedom of expression and the media is fully consistent with international human rights standards, and implement recommendations made by the

office of the OSCE Media Representative and other international and national experts for revising problematic provisions.

- Refrain from adopting and bringing into force new legislation that does not meet the requirements of international human rights law with regard to the protection of freedom of expression and the media.
- Put in place concrete mechanisms to enforce guarantees for the prohibition of censorship and the operating freedom of media laid down by law, in consultation and cooperation with the OSCE Media Representative and civil society, and promote the growth of private, independent media in practice.
- Ensure that media outlets can gain registration in a simple, quick and non-bureaucratic procedure, and that they cannot be suspended or closed down without evidence of serious violations. Limit the use of such penalties to exceptional cases and as a last resort to be imposed by court after media outlets have been given adequate opportunities to rectify the situation.
- Take systematic measures to promote internet access among the population and refrain from restricting access to websites simply because they contain information that authorities do not like or agree with.
- Put an end to the practice of extrajudicial blocking of websites and ensure that any measure to limit access to online content deemed illegal is strictly limited to that specific content, is absolutely necessary, and is sanctioned through an impartial and public court decision subject to appeal.
- Publicly condemn acts of intimidation and harassment against journalists and other outspoken individuals, as well as their families, and ensure that such cases are promptly and thoroughly investigated and that all responsible are held accountable.
- Fully decriminalize defamation, including with respect to libel of government officials. Establish upper limits for the amounts of moral damage that can be awarded in defamation lawsuits and restrict the opportunities of public officials who are acting as plaintiffs in such cases to require pecuniary damage.
- Ensure that no journalists or other individuals are criminally charged and convicted in retaliation for exercising their internationally protected right to freedom of expression. Drop the charges and release all individuals who have been charged on such grounds.

Recommendations to the entire community of OSCE participating States:

- Use bilateral and multilateral contacts, high-level meetings, public statements and other means to prominently and consistently raise issues of concern regarding legislation and practices negatively affecting freedom of expression and the media in individual OSCE countries, as well as to defend victims of repression.
- Support and cooperate with the office of the OSCE Media Representative in its mandate of helping participating States to abide by their commitments to freedom of expression and free media. Set a good example for other OSCE states by implementing relevant recommendations and best practices identified by this Representative.
- As appropriate, apply the new EU guidelines on promoting freedom of expression online and offline in third countries¹², in particular through the activities of diplomatic representations.

- Regularly consult with civil society on issues concerning freedom of expression and the media and support civil society initiatives aimed at promoting improved realization of commitments in this area in the OSCE region.

¹ See http://www.skolevideos.dk/video/byi_46vc6qE/%D0%9E%D0%B1%D1%8B%D1%81%D0%BA-%D0%B2-%D0%B0%D1%81%D1%82%D0%B0%D0%BD%D0%B8%D0%BD%D1%81%D0%BA%D0%BE%D0%BC-%D0%BE%D1%84%D0%B8%D1%81%D0%B5-1612-1612.html

² For a detailed analysis of the law, see the review commissioned by the OSCE Representative on Freedom of the Media from April 2013 (in Russian), at <http://www.osce.org/ru/fom/100831>

³ See «Власти Таджикистана запретили газету «Хафта» после резонансного интервью в Муминном Каноатом», 17 February 2014, at <http://tjnews.ru/?p=40312>

⁴ See «Таджикистан блокирует более 130 сайтов, в том числе соцсети», 21 December 2012, <http://ria.ru/society/20121221/915825231.html>

⁵ According to 2013 statistics from the International Telecommunications Union, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

⁶ Adil Soz International foundation for the protection of free speech, “Statistics of violations of the rights of media outlets and journalists in Kazakhstan in January-December 2013,” at <http://www.adilsoz.kz/en/statistic/statistic-of-violations-of-rights-of-media-outlets-and-journalists-in-kazakhstan-january-december-2013/>

⁷ See “Civil society appeal to veto the new Criminal and Criminal Procedure Codes, as well as the new Code on Administrative offences adopted by the Parliament of the Republic of Kazakhstan,” 19 June 2014, at http://www.bureau.kz/data.php?page=0&n_id=7177&l=en

⁸ «НАНСМИТ зафиксировал в 2013 году 82 факта нарушений прав журналистов и СМИ», January 2014, <http://nansmit.tj/ezhemesyachnyiy-informatsionno-pravovoy-byulleten-smi-i-pravo-92-103-yanvar-2014g/>

⁹ For more information, see <http://freealexsodiqov.org/>

¹⁰ Radio Free Europe/Radio Liberty, “Six weeks reporting from Turkmenistan,” 8 February 2014, <http://www.rferl.org/content/turkmenistan-reporting-azatlyk-difficulties/25257448.html>

¹¹ See Amnesty International and Human Rights Watch press release, “Turkmenistan: Activist’s Family Barred from Travel Abroad,” 20 May 2014, available at <http://www.chrono-tm.org/en/2014/05/turkmenistan-activists-family-barred-from-travel-abroad-brother-of-exiled-rights-defender-halted-at-the-airport/>

¹² Available at www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/142549.pdf