

ARTICLE 19

# Kazakhstan: The Law on Television and Radio Broadcasting

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May 2015

Legal analysis

# Executive summary

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In May 2015, ARTICLE 19 analysed the Law on Television and Radio Broadcasting (the Law) of the Republic of Kazakhstan for its compliance with international standards on freedom of expression. The analysis focuses in particular on the governmental control over the media, the lack of independence of the regulator, and the lack of precision with which restrictions on freedom of expression are expressed.

ARTICLE 19 believes that this Law is open to abuse by government, having insufficient safeguards against arbitrary interference. Thus, this law poses a genuine threat to freedom of expression, as well as freedom of information, in Kazakhstan.

In the analysis, ARTICLE 19 concludes that the main challenge in the field of media regulation in Kazakhstan was the transformation of broadcasting from a regime of political control to a system whereby broadcasting is ruled by legal norms.

Further, the Law does not establish independence for the broadcasting regulator, neither does it establish clear and precise procedure for registration and licensing. In addition, its obligations regarding content restrictions are unclear- and, in any case, content-related obligations should be developed in close consultation with relevant stakeholders, and indeed the public.

There are a number of further issues with the Law, including provisions for blanket refusal of registration applications from foreign channels, the digital switchover, excessive sanctions, and the failure of the Kazakhstan public broadcaster's failure to transform into a legitimate public service media provider.

ARTICLE 19 calls on the Kazakhstan legislator to consider our recommendations, and revise the Law accordingly. We also call on civil society and other stakeholders to advocate for the most progressive legislation in this important area, and to ensure that regulation of the broadcasting sector fully complies with international freedom of expression standards.

## Summary of recommendations

- Powers in the field of regulation or monitoring of the broadcast sector which are still in the hands of the government and public authorities should be given to an independent regulatory body;
- The status of the regulatory body should be revised and upgraded to that of a genuine regulatory authority in compliance with international standards;
- The Law should include explicit recognition of the major principles of broadcast regulation, editorial independence of broadcasters, equal and fair treatment of broadcasters, and promotion of diversity;
- The Law should include clear and precise procedures for registrations, licenses, frequencies, must-carry distribution and digital free-to-air broadcasting;
- The regulatory body should not be able to refuse registrations of foreign channels, and the definitions of content restrictions should be removed or reworded in a clear and precise manner;
- Regarding the use of national language and the protection of domestic works and industries, the Law should provide that obligations related to content should be developed in close consultation with broadcasters and other interested stakeholders, and

- should be finalised only after public consultation;
- Regarding the digital switchover, the Law should clarify that the national broadcasting operator should treat all radio and television channels in a fair and non discriminatory manner;
  - Sanctions for violations of the law on broadcasting should be applied by the regulatory authority, be proportionate and necessary, and make use of a large range of measures;
  - Kazakhstan should take necessary measures to transform the public broadcaster into a public service media provider.

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# Introduction

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In May 2015, ARTICLE 19 analysed the Law No 545-IV on Television and Radio Broadcasting (the Law) of the Republic of Kazakhstan (Kazakhstan)<sup>1</sup> for its compliance with international standards on freedom of expression. The Law was adopted by Parliament on 28 December 2011 and signed by President Nazarbayev on 18 January 2012.

ARTICLE 19 is an international, non-governmental human rights organisation which works with partner organisations around the world to protect and promote the right to freedom of expression. We have reviewed media laws of more than 30 countries and provided recommendations to their governments and Parliaments intended to safeguard the right to freedom of expression.

This analysis builds on our previous analysis of the law on broadcasting in 2011<sup>2</sup> and our broader efforts to improve the protection of the right to freedom of expression in the country.

In 2011, ARTICLE 19 observed that the main challenge in the field of media regulation in Kazakhstan was the transformation of broadcasting from a regime of political control to a system whereby broadcasting is ruled by legal norms. We reiterate that the Law favours governmental control over the media and fails to provide sufficient and effective safeguards against arbitrary interference.

ARTICLE 19 recommends that the Kazakhstan legislator considers our recommendations and revises the Law accordingly. We also call on civil society and other stakeholders to advocate for the most progressive legislation in this important area and ensure that regulation of the broadcasting fully complies with international freedom of expression standards.

This analysis was prepared as part of an initiative led by ARTICLE 19's partner in Kazakhstan, the International Foundation for Protection of Freedom of Speech Adil Soz (Adil Soz), to launch a campaign to develop a "Road Map for Advancing Media Legislation" in Kazakhstan. Within this initiative, ARTICLE 19 and Adil Soz analyse recent changes to existing laws and codes, as well the provisions of new laws, related to media freedom and freedom of expression. The initiative aims to engage the government of Kazakhstan on the integration of international standards into legislation related to the media, as part of the government's enduring commitment to modernisation and global technological progress.

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<sup>1</sup> ARTICLE 19's analysis is based on an unofficial English translation of the Law from Russian.. ARTICLE 19 does not take responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation.

<sup>2</sup> See, ARTICLE 19, [Analysis of the Law on Broadcasting](#), 2011.

# International standards on freedom of expression and media regulation

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## The importance of the right to freedom of expression

The right to freedom of expression is protected by a number of international human rights instruments, in particular Article 19 of the Universal Declaration of Human Rights (UDHR)<sup>3</sup> and Article 19 of the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> Kazakhstan ratified the ICCPR in January 2006 and pursuant to Article 4(3) of Kazakhstan's Constitution, the provisions of this treaty take precedence over incompatible domestic legislation. Kazakhstan's Constitution also protects the right to freedom of expression, in Article 20.

Freedom of expression is also guaranteed in various OSCE documents agreed to by Kazakhstan, such as the Helsinki Final Act,<sup>5</sup> the Final Document of the Copenhagen meeting of the human dimension of the OSCE,<sup>6</sup> the Charter of Paris agreed in 1990,<sup>7</sup> the final document of the 1994 Budapest CSCE Summit,<sup>8</sup> and the Istanbul Summit Declaration.<sup>9</sup>

From a comparative perspective, the importance of freedom of expression is reflected in the three regional systems for the protection of human rights, the American Convention on Human Rights,<sup>10</sup> the European Convention on Human Rights (ECHR)<sup>11</sup> and the African Charter on Human and Peoples' Rights.<sup>12</sup> While none of these instruments, nor judgments of the courts operating under them, are directly binding on Kazakhstan, they are important comparative evidence of the content and application of the right to freedom of expression, and may be used to inform the interpretation of Article 19 of the ICCPR, which is binding on Kazakhstan.

The guarantee of freedom of expression applies with particular force to the media, and international and regional bodies have repeatedly highlighted the importance of free media in the political process.<sup>13</sup>

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<sup>3</sup> UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948

<sup>4</sup> GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc.

<sup>5</sup> OSCE, Helsinki, 1 August 1975.

<sup>6</sup> Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990, in particular paras 9.1 and 10.1.

<sup>7</sup> Charter of Paris for a new Europe, CSCE Summit, November 1990

<sup>8</sup> Towards a Genuine Partnership in a New Era, CSCE Summit, Budapest, 1994, paragraphs 36-38

<sup>9</sup> OSCE Istanbul Summit, 1999, paragraph 27. See also paragraph 26 of the Charter for European Security adopted at the same meeting.

<sup>10</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>11</sup> ETS Series No. 5, adopted 4 November 1950, in force 3 September 1953. As of 7 July 2003

<sup>12</sup> Adopted 26 June 1981, in force 21 October 1986

<sup>13</sup> See, e.g. UN Human Rights Committee General Comment 25, 12 July 1996; the European Court of Human Rights, *Castells v. Spain*, 24 April 1992, Application No. 11798/85; or the Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC5/85, 13 November 1985, Series A, No. 5.

## Restrictions on freedom of expression

The right to freedom of expression is not an absolute right; it may, in certain, narrowly-defined circumstances, be restricted. However, because of its fundamental status, restrictions must

- *Be prescribed by the law*: they have to be precise and clearly stipulated in accordance with the principle of the rule of law. This means that vague or broadly worded restrictions, or restrictions that leave excessive discretion to executive authorities, are incompatible with the right to freedom of expression;
- Pursue a legitimate aim, as explicitly enumerated in Article 19 para 3 of the ICCPR: namely respect of the rights or reputations of others, the protection of national security or of public order (*ordre public*), or of public health or morals. The list of aims is an exhaustive one, thus an interference which does not pursue one of those aims violates Article 19;
- Be necessary and proportionate to aims pursued.<sup>14</sup> The word “necessary” has specific meaning in this context. It means that there must be a “pressing social need” for the interference;<sup>15</sup> that the reasons given by the State to justify the interference must be “relevant and sufficient;” and that the State must demonstrate that the interference is proportionate to the aim pursued. As the Human Rights Committee has stated, “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.”<sup>16</sup>

## Media regulation

In order to protect the right to freedom of expression, it is imperative that the media is permitted to operate independently from government control. The primary aim of media regulation should be to promote the development of an independent and pluralistic media, thus fulfilling the public’s right to receive information from a variety of sources.

Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public’s ‘right to know’.

An important aspect of States’ positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access for all to, the media.

The Human Rights Committee (HR Committee) has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance ‘national unity’ violate freedom of expression.<sup>17</sup>

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<sup>14</sup> E.g. the ECtHR, *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, 18 April 2005, para. 6.8

<sup>15</sup> E.g., the ECtHR, *Hrico v. Slovakia*, 27 July 2004, Application No. 41498/99, para. 40.

<sup>16</sup> HR Committee, *Rafael Marques de Morais v. Angola*, para 6.8.

<sup>17</sup> HR Committee *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practise journalism<sup>18</sup> and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression.

Finally, it has now been widely accepted that any public bodies with regulatory powers in the media or telecommunications sectors should be fully independent of the government, and protected against interference by political or commercial interests. If this is not the case, the system for media regulation can be easily abused for political or commercial purposes. The three special mandates on freedom of expression have therefore recommended:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>19</sup>

Specific broadcast standards are contained in recommendations and declarations by various international bodies and they are designed to serve as guidance for broadcast regulators and legislators and ensure that freedom of expression and media freedom are protected in the field of broadcasting. ARTICLE 19 has compiled the relevant principles on broadcasting in its publication *Access to Airwaves*.<sup>20</sup>

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<sup>18</sup> See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*

<sup>19</sup> [Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression](#), 18 December 2003

<sup>20</sup> [Access to the Airwaves – Principles of Freedom of Expression and Broadcast Regulation](#), March 2002.



## Analysis of the Law

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In a 2011 analysis of the Law, ARTICLE 19 observed that the main challenge regarding the media regulation in Kazakhstan was the transformation of broadcasting from a regime of political control to a system whereby broadcasting is ruled by legal norms. We reiterate that the Law favours governmental control over the media, and fails to provide sufficient and effective safeguards against arbitrary interference.

In the previous analysis, we also noted that the Law aimed at replacing the provisions of the Law on Mass Media that concern broadcasting and the licence regime for broadcasters (provided for in the Law on Licensing). In the Law, Article 10.8 and Article 14 of the Law provide that licensing television and radio broadcasting shall be performed by the regulatory body in accordance with the Law on Licensing. Moreover, Article 5.3 of the Law provides that state inspections shall be implemented in accordance with the Law on State Control and Supervision.

ARTICLE 19 observes that the multiplication of legislations may give rise to the application of contradictory rules and thus become a source of unnecessary burden for media actors. In the process of bringing national laws in line with international standards on freedom of expression, it is paramount that Kazakhstan authorities ensure consistency between existing laws.

### **State control over broadcasting policy**

The Law maintains a strong governmental control over broadcasting policy. We acknowledge that it may be legitimate for the government to set the main direction of the state policy in the field of radio and television broadcasting, as provided for at Article 6.1 of the Law. Nevertheless, the Law gives the Government powers which extend beyond principal policy orientations, in particular:

- According to Article 12, the Government sets the procedures for invitations to tender related to the list of radio and TV channels which benefit from must-carry distribution, and furthermore approves the list that results.
- Article 13 provides that the Government sets the procedure for the invitations to tender related to the list of radio and TV channels which will be broadcast free-to-air when digital terrestrial broadcast starts in Kazakhstan.

ARTICLE 19 insists that broadcasting laws should aim at limiting the Government and local authorities' powers in order to preserve media actors from arbitrary political interference. In that sense, we are concerned that the Law would create government control over licensing, procedures for invitation to tenders for distribution of radio frequencies and free-to-air radio and TV channels to be distributed by the national operator after the digital switchover, and the selection of said national operator. We are also concerned with the role entrusted to local authorities in the implementation of the broadcasting legislation (Article 8).

In accordance with international standards and good practices on regulation of the broadcast sector, the Kazakhstan Government needs to overhaul its approach to media regulation.

**Recommendations:**

- The powers still in the hands of the government and public authorities in the field of regulation or monitoring of the broadcast sector should be given to an independent regulatory body.

**Independent regulation of broadcast media**

Article 7 of the Law entrusts a regulatory body with the implementation of the state broadcasting policy, and the coordination of the activities of the central and local administrations relating to broadcasting. In addition, this body is given further coordination powers and entrusted with organising the calls to invitation to tenders for distribution of frequencies for radio and television broadcasting, the registration of national and foreign radio and television channels, and the final decision on the list of must-carry radio and television channels.

The regulatory body holds the power to monitor and control compliance of licensees with the requirements of the legislation of Kazakhstan. It is tasked with developing rules in the fields of licenses, calls for invitation to tenders, distribution of frequencies, and issues of television and radio broadcasting development. It has the power to endorse regulatory, legislative or technical acts in the field of broadcasting, including rules on broadcasting adopted by broadcasting operators. In addition, the regulatory body shall perform other functions as stipulated by the Constitution, a law or an act of the President or of the Government.

ARTICLE 19 acknowledges that the creation of a regulatory authority constitutes a positive step for the protection of media actors against arbitrary political interference. However, we observe that the Law fails to meet international standards that set the conditions which would allow the regulatory body to perform its role effectively.

The Law does not specify the status of the regulatory body, or its place in the administrative system of the State. Most importantly, none of the necessary safeguards for the independence of the broadcasting regulatory body are provided for in the Law. ARTICLE 19 recommends that the status of the regulatory body be revised and upgraded to that of a genuine regulatory authority.<sup>21</sup>

- First, there should be an explicit pronouncement of the regulatory body's independence from the Government and the President. The Constitution and the Law should include a provision to that effect.
- Second, the Law should provide for the appointment of members of the board of the regulatory body by the Parliament through an open, participative process.
- Third, the Law should define precise rules of incompatibility for membership in the board of the regulator. At a minimum, no one should be appointed who: (1) is employed in government, the civil service, a political party, or is an elected representative; (2) holds a position or significant financial stake in the broadcast or telecommunication sectors. Members of the board should serve in their individual capacity and exercise their functions in the public interest at all times.

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<sup>21</sup> See ARTICLE 19's [Access to Airwaves](#) for further elaboration.

- In addition, the Law should accurately set the rules concerning the duration of the mandate, the financial conditions of its exercise, and its termination. Only the appointing body should have the power to dismiss members of the Board of the regulatory authority, and this power should be subject to judicial review. A member should not be subject to dismissal unless he or she:
  - no longer meets the rules regarding compatibility, as set out above;
  - commits a serious violation of his or her responsibilities, as set out in law, including a failure to discharge those responsibilities; or
  - is clearly unable to perform his or her duties effectively.
- The regulatory authority should benefit from adequate, sufficient and stable funding organised by the law.
- The regulatory authority should be held publicly accountable for its work and report about them to Parliament and the public. The Law should require that the regulatory authority produces a detailed annual report on its activities and budget, which should be publicly disseminated.
- Wherever the regulatory authority holds the power to set rules for calls for tenders or licenses, the powers of the regulatory body should be limited to implementing the general principles set in the Law.
- Wherever the regulatory authority holds regulatory or legislative power, the law should define, with precision, its areas of competence; the regulatory body should only adopt rules through open, participative processes where media actors and civil society organisations have a say, such as public consultations.
- There should be a mechanism for judicial review of all decisions adopted by the regulatory authority.

**Recommendations:**

- The status of the regulatory body should be revised and upgraded to that of a genuine regulatory authority;
- There should be an explicit recognition of the regulatory body's independence from the Government and the President;
- The Law should provide for the appointment of the members of the board of the regulatory body by Parliament through an open, participative process;
- The Law should define precise rules of compatibility for membership in the board of the regulator;
- The Law should accurately set the rules concerning the duration of the mandate, the financial conditions of its exercise, and its termination. Only the appointing body should have the power to dismiss members, and this power should be subject to judicial review;
- The regulatory authority should benefit from adequate, sufficient and stable funding organised by the law;
- The regulatory authority should be held publicly accountable for its work, and report to Parliament and the public. The Law should require that the regulatory authority produces a detailed annual report on its activities and budget, which should be publicly available;
- Wherever the regulatory authority holds the power to set rules for calls for invitation to tenders or licenses, the powers of the regulatory body should be limited to implementing the general principles set in the Law;

- Wherever the regulatory authority holds regulatory or legislative power, the law should define with precision its areas of competence and the regulatory body should only adopt rules through open, participative processes where media actors and civil society organisations have their say, such as public consultations;
- There should be a mechanism for judicial review of all decisions adopted by the regulatory authority.

### **Key principles of broadcast regulation**

Under international standards, public regulation of broadcast media is justified inasmuch as the spectrum is a limited resource which should be managed in the public interest.

ARTICLE 19 recommends that explicit recognition of the major principles of broadcast regulation be inserted in the Law:

- The editorial independence of broadcasters should be protected from political interference. International law sets out that it should be up to broadcasters, not the government, regulatory bodies or commercial entities, to make decisions about what to broadcast. We recommend that the principle of editorial independence, whereby decisions related to broadcasting are made by broadcasters on the basis of professional criteria and the public's right to know, be guaranteed in the Law and respected in practice.
- As we recommended in our 2011 analysis, all broadcasters should be treated equally and fairly.

Under international law, States also have an obligation to take positive measures to promote diversity. The Law should ensure that the promotion of diversity and pluralism are recognised as a key principle of broadcast regulation.<sup>22</sup> Diversity implies pluralism of broadcasting organisations, of ownership of those organisations, and of voices and viewpoints within broadcast programming as a whole. A State in which only a privileged few can effectively express their opinions cannot be said to be a free society. Such a situation breaches not only the rights of each individual citizen to be well-informed and to receive information from a variety of sources.

### **Recommendations:**

- An explicit recognition of the key principles of broadcast regulation be inserted in the Law:
  - Editorial independence of broadcasters and protection from political interference;
  - Equal and fair treatment of all broadcasters;
  - Promotion of diversity and pluralism.

### **Registration, licences, frequencies, must-carry**

ARTICLE 19 observes that radio and television companies' freedom to operate is dependent upon multiple procedures related to licensing, registration, frequencies, must-carry and, at a

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<sup>22</sup> ARTICLE 19 recognises that the Law has made some space for the promotion of pluralism: Article 12 provides for the setting up of a list of must-carry channels which aims at ensuring the development of freedom of expression and pluralism of opinion.

later stage, free-to-air digital distribution. We are concerned that the number of processes creates an unnecessary burden on the broadcast sector. We recall that under international law, all restrictions to freedom must be necessary and proportionate. We consider that inasmuch as possible the procedures should be merged into one sole process.

### **Recommendations:**

- The relevant procedures for registrations, licenses, frequencies, must-carry distribution and digital free-to-air broadcasting should be set out clearly and precisely in the Law, and should:
  - Include clear time limits within which decisions must be made, and allow for effective public input and an opportunity for the applicant to be heard;
  - Applications should be assessed according to clear criteria set out in advance in legal form;
  - Any refusal to issue a licence should be accompanied by written reasons, and should be subject to judicial review;
  - Where licensees also need a broadcasting frequency, they should not have to go through a separate decision-making process to obtain this frequency; successful applicants should be guaranteed a frequency appropriate to their broadcasting licence;
  - Clear time-limits on the duration of different types of authorisations or licences should be set out in legal form. These time limits should be sufficient to give applicants a realistic opportunity to recoup their investment in both financial and human terms;
  - Licensees should benefit from a presumption of licence renewal, although this may be overcome for public interest reasons or where the licensee has substantially failed to comply with the licence terms and conditions. Any refusal to renew a licence should be accompanied by written reasons.

### **Foreign radio and television channels**

Under Articles 19-21 of the Law, foreign radio and television channels must be registered with the regulatory body. The Law describes the procedure that must be followed to apply for registration, and lists applicable conditions.

The Law provides that a foreign channel will be denied registration or that its registration will be cancelled if broadcasts material that “contain[s] propaganda or agitation of violent change of the constitutional order, violation of the integrity of the Republic of Kazakhstan, undermining state security, war, propaganda of extremism or terrorism, the cult of cruelty and violence, social, racial, national, religious, class and tribal superiority, information aimed at inciting ethnic and religious hatred, as well as film and video production of pornographic and sexual-erotic nature, as well as information that promotes suicide” (Article 21.3). The registration of a foreign channel is also dependent upon a theological opinion (Article 21.4).

ARTICLE 19 acknowledges that the Law requires that the reasons for a refusal to register a foreign channel shall be given in writing (Article 21.2). While this provision is necessary to the understanding of the negative decision, ARTICLE 19 remains concerned about the powers of the regulatory body to exercise prior content control of foreign radio and television channels. Prior censorship poses special dangers to freedom of expression. If the authorities are able to suppress channels which nobody has seen, it becomes impossible for others to verify whether the suppression was indeed justified: such an unchecked power can be easily abused to prevent criticism of public authorities. The purpose of the registration of foreign

channels should be to ensure the proper management of broadcasting, rather than to control which foreign channels should be broadcast in Kazakhstan. ARTICLE 19 recommends that the regulatory body should not be able to refuse registrations of foreign channels merely on the grounds that they are foreign.

ARTICLE 19 acknowledges that the regulatory authority must resort to judicial procedure when pursuing the suspension or termination of the registration of a foreign channel.

ARTICLE 19 considers that the content restrictions are very broadly defined, and give room for indiscriminate refusals to register foreign channels, or withdraw such registrations. In this respect, we note that according to international law, broadly-defined restrictions of freedom of expression are problematic because they fail to satisfy the first element of the three-part test of Article 19 (3) of the ICCPR, according to which the restrictions should be “provided by law”. International courts have stated that this requirement means that all restrictions should be “accessible and formulated with sufficient precision to enable the citizen to regulate her conduct.” The Law should include only definitions of content restrictions that meet these criteria and set out the principle that they should only be interpreted in the manner which is the least restrictive for freedom of expression.

**Recommendations:**

- The regulatory body should not be able to refuse registrations of foreign channels, and the definitions of content restrictions should be either removed or reworded in a clear and precise manner.

**Protection of national identity**

Article 10 and 28 of the Law provide detailed rules related to the use of national language and the broadcast of domestic cultural works and industries.

While such obligations may contribute to the promotion of broadcast diversity by enhancing the range of material available to the public, they should not be unrealistic or excessively onerous on broadcasters. ARTICLE 19 considers that positive obligations related to content should be developed in close consultation with broadcasters and other interested stakeholders, and should be finalised only after public consultation.

**Recommendations:**

- The Law should provide that obligations related to content are developed in close consultation with broadcasters and other interested stakeholders, and should be finalised only after public consultation.

**Digital switchover**

Article 42 of the Law describes the rules related to the organisation of the digital switchover from terrestrial broadcasting. Under Article 25, the national broadcasting operator is tasked with the development and maintenance of the national digital broadcasting network.

ARTICLE 19 acknowledges that the Law provides certain safeguards for the continuation of existing channels after the technological transition. We recommend that the Law further



clarifies these safeguards.

**Recommendations:**

- The Law should clarify that the national broadcasting operator should treat all radio and television channels in a fair and non-discriminatory manner.

**State broadcaster**

ARTICLE 19 is concerned with the absence of transformation of the State broadcaster into a modern public service media provider. State broadcasters are not independent from public authorities and serve as the mouthpiece of the Government. In addition, they tend to compete unfairly with private broadcasters, whose commercial viability may be threatened. Most OSCE States have transformed their historical state broadcaster into public service media providers, which genuinely serve the public interest as they rely on public funding and are independent from the government. We recommend that Kazakhstan promptly initiate a similar process.<sup>23</sup>

**Recommendations:**

- The Kazakhstan Government should start a process of transforming the state broadcasters into a genuine public service media, in line with international freedom of expression standards in this area.

**Sanctions**

Under Article 452 of the Code of Administrative Law Violations, a number of violations of the Law are sanctioned with fines.

ARTICLE 19 recalls that under international law, all restrictions to freedom of expression, including sanctions for violation of a legal provision, should always be necessary and proportionate.

In the field of broadcast regulation, the independent regulatory authority should be responsible for monitoring and, where necessary, sanctioning violations of legal obligations by broadcasters. The regulatory authority should be able to resort to a large range of sanctions, from a mere warning to more severe penalties such as fine or suspension of the license.

**Recommendations:**

- The Law should precisely describe the range of sanctions which the regulatory body may take in case of violations. These sanctions can range from the slightest (a warning) to the more severe (a fine, a suspension or termination of a license).

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<sup>23</sup> See ARTICLE 19's [Access to Airwaves](#) for further elaboration.

## About ARTICLE 19

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

On the basis of these publications and ARTICLE 19's overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org). For more information about ARTICLE 19's work in Kazakhstan, or in Central Asia more broadly, please contact Rinata Alibekova, Central Asia Project Coordinator, at [rinata@article19.org](mailto:rinata@article19.org).

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