



26 November 2010

## STATEMENT

### Kazakhstan: OSCE Commitments Remain Unfulfilled

**The government of Kazakhstan has failed to fulfil their commitment to improve the situation for journalists and media before their chairmanship of the OSCE ends. ARTICLE 19 and Adil Soz is concerned that they have failed to promote democracy or enhance freedom of expression during their chairmanship.**

Kazakhstan's government made a commitment to improve freedom of expression in the country when awarded a one year chairmanship of the Organization for Security and Co-operation in Europe (OSCE) in 2010. Their commitment included review of defamation legislation and adoption of access to information legislation. A month before the end of its OSCE Chairmanship – ARTICLE 19 and Adil Soz are concerned that the authorities have failed to fulfil these commitments.

Our concerns include the following:

- **Kazakhstan's criminal defamation legislation continues to stifle criticism**  
The Criminal Code of Kazakhstan includes several provisions concerning libel and insult. The general norms on libel and insult are Articles 129 and 130. These provide for fines, prohibition to engage in public work, correctional labour and imprisonment for the crimes of libel and insult. In separate provisions the Criminal Code incriminates libel and insult of public officials. Article 318, 319 and 320 provide special protection for the dignity and honour of the president, MPs and state officials by setting out higher penalties than for ordinary citizens. Article 343 incriminates the libeling of a judge, prosecutor, investigator, interrogator, court marshal, or court executioner, and provides for imprisonment up to four years.

In 2010 the General Prosecutor's Office (GPO) submitted to parliament draft legislation to decriminalise defamation. Although the draft law was never made public, different senior state officials revealed that the reform package focused only on Articles 129 and 130 of the Criminal Code. The crimes of insult and libel of the president, MPs, state officials and judges, prosecutors, investigators, interrogators, court marshals, and court executioners would remain. Parliament did not discuss or adopt any of the GPO's proposals included in the draft.

ARTICLE 19 repeatedly emphasises that criminal defamation laws are inconsistent with freedom of expression. In many countries, including Kazakhstan, criminal defamation laws are abused by the powerful to repress dissent and limit criticism. Prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, and excessive fines should never be available as sanctions for breach of defamation laws, no matter how egregious or blatant the defamatory statement. Such sanctions cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations.

Finally it is now well established in international law that under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status.

- **Civil defamation laws fail to meet international freedom of expression standards**

Article 143 of the Civil Code of Kazakhstan, providing for protection of reputation, is problematic for free expression for several reasons. First, it does not take into account that statements of public interest justify higher protection than ordinary expression. Second, it does not provide for defence of reasonable publication like in democratic countries where it is recognised that the media can make honest mistakes if the publication is of public interest and the public's right to know cannot wait. 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.

In 2010 the authorities made no efforts to bring the civil defamation legislation in line with international standards and secure the media the same level of freedom as in democratic states.

- **Kazakhstan administrative law can be used to suppress free expression**

ARTICLE 19 and Adil Soz note with concern that the Code of Administrative Offenses of Kazakhstan still contains a number of problematic provisions. Namely, it provides for administrative responsibility for insult of official persons, permission by editors to publish materials aimed at fomenting social hostility, manufacturing, storage, import and carriage of products of mass media containing information and material undermining the safety of the state, or raising social class discord and a cult of cruelty, violence or pornography, pre-determination in mass communication media of the results of a court trial of any case considered by the court, and presentation of deliberately false information and materials to mass communication media.

ARTICLE 19 and Adil Soz note that such administrative legal provisions do not exist in democratic counties. Apart from their lack of clarity or necessity, they provide for very restrictive sanctions including harsh fines, confiscation of publications, suspension and termination of broadcasting services and administrative arrest for up to several weeks. ARTICLE 19 has previously pointed out that the mere existence of these harsh sanctions has a chilling effect on freedom of expression.

At the end of 2009, the Kazakhstani government submitted a draft Code of Administrative Offences to the national Parliament to replace the existing law. Reviewing the draft Code, ARTICLE 19 commented that the problematic provisions still remain in the new Code. Despite the promises for reform, the Code of Administrative Offenses was not replaced in 2010, and still threatens free expression.

- **Lack of transparency and access to information**

Kazakhstan is one of the few member states of the OSCE without an access to information law. As a result, public governance remains non-transparent and unaccountable.

In 2010 supported by UNDP, a group of MPs and legal experts prepared a draft Law on Access to Public Information which was presented at an international conference in Astana. The draft law's positive features included a broad definition of the right to access information, good procedural guarantees, specific obligations of proactive disclosure, and the recognition of a right to attend public meetings. At the same time, the draft law provides for a broad regime of exceptions and fails to set up a mechanism securing the enforcement of the law. The commitment to adopt the access to information law has yet to be fulfilled.

ARTICLE 19 and Adil Soz are concerned that Kazakhstan's authorities have failed to fulfil their commitments to promote free expression and have missed the opportunity established during their 2010 OSCE Chairmanship to become a regional democratic leader.

**Recommendations:**

ARTICLE 19 and Adil Soz recommend that the Kazakhstani government reviews its commitments to reform and does the following:

- Abolish all provisions on crimes of insult and defamation in the Criminal Code, including those protecting the president, MPs, state officials and members of the judiciary
- Revise the Civil Code to provide defences for reasonable publication and opinion
- Revise the Code of Administrative Offenses, abolishing insult of official persons, clarifying the media related offenses and reducing the sanctions
- Remove the sanction of administrative arrest for any type of expression
- Adopt the access to information law as soon as possible, ensuring that the list of exceptions for information disclosure is limited and a mechanism for enforcement of the law is set out.

**FURTHER INFORMATION:**

- For more information please contact: Boyko Boev, Legal Officer, [boyko@article19.org](mailto:boyko@article19.org), +44 20 7324 2516
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.
- Adil Soz is an international foundation for the protection of freedom of speech registered in Kazakhstan.