



Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media

COMMENTS AND SUGGESTIONS ON THE DRAFT LAW “ON INTRODUCING AMENDMENTS AND ADDITIONS TO SOME LEGISLATIVE ACTS OF THE REPUBLIC OF KAZAKHSTAN ON QUESTIONS OF DEFAMATION IN THE MASS MEDIA” (drafted by the Ministry of the Interior of the Republic of Kazakhstan)¹

The OSCE has extensively and consequently campaigned for full decriminalization of libel and insult. The proposed draft law *does not abolish* criminal responsibility for defamation, but introduces significant changes into the order regulating the offence of defamation.

Under the current draft law, almost all of the articles on criminal responsibility for libel and insult remain in the **Criminal Code of the RK**.

Concurrently, the maximum criminal responsibility under Article 129 (“Libel”) is reduced from three years’ imprisonment to correctional labour of two years. Under Article 130 (“Insult”), criminal responsibility is lowered via the elimination of imprisonment as punishment (while corrective labour of up to one year remains).

Similar changes reducing punishment are offered under Article 343 (“Libel of a judge, prosecutor, investigator, interrogator, court marshal, court executioner”). Here, the form of punishment is lowered from four years’ imprisonment to corrective labour of up to two years. In other articles regulating libel and insult (Articles 319, 320), deprivation of freedom is also replaced with correctional labour of up to one year.

Therefore, under all of the articles of the Criminal Code RK on libel and insult (with exception of Article 318 “Infringement on the honour and dignity of the President of the Republic of Kazakhstan and interference with his activities”), *punishment in the form of deprivation or limitation of freedom is repealed* and replaced with corrective labour.

Corrective labour is performed at the convict’s workplace. Article 43 of the CC RK (“Corrective labour”) determines that the state receives a fraction of the convict’s earnings, the amount to be determined by a court decision and within the range of 5 to 20 percent. Corrective labour cannot be assigned to persons who are not employed full-time or who are pursuing an education away from production. Such persons may be assigned a fine instead of corrective works by a court order. A court may also replace corrective works with a fine in case the above circumstances arise while serving punishment.

Under all of the discussed articles on libel and insult, qualifying offences committed via the distribution of materials in the media are repealed. In practice, this will not change much. Under the criminal law, qualifying offences merely serve as means of differentiation of responsibility, such as, for example, in case of aggravated circumstances in the commission of crimes through the media, as exists in the current edition of these articles. The abolition of the qualification “the same act committed with the use of the mass media” obviously lowers the level of social danger

¹ The author of the memorandum is Andrei Richter, Doctor of Philology (Moscow State University Faculty of Journalism), Director of the Media Law & Policy Institute (Moscow), Member of the International Commission of Jurists (ICJ, Geneva), Co-Chairman of the law section and member of the International Council of the International Association for Media and Communication Research (IAMCR).

of libel in the media. However, the offences themselves (such as dissemination of knowingly libellous, slanderous information) continue to apply. Moreover, under articles 129 and 130 the qualifying feature “in publicly demonstrated compositions” remains, leaving room for responsibility of television journalists. Television programmes are an example of publicly demonstrated compositions under current legislation, including legislation on copyright. From this it follows that – along with ordinary citizens – journalists will be held criminally liable for libel and insult as before.

As for draft changes to the **Civil Code of the RK**, they pose a definitive danger to freedom of the media.

The draft law introduces responsibility for dissemination of information “in insulting form touching upon private life and infringing upon honour and dignity” under Article 143 of the Civil Code of the RK.

It should be noted that Article 143 is followed by Article 144, that prescribes a citizen’s right to privacy. Both of these articles are found in Section 3 of the Civil Code (“personal non-property rights”). In accordance with Article 141 of the Civil Code of the RK, “a person whose personal non-property rights have been violated...has a right to compensation of moral damages under rules of the current Code”, thus *already* envisioning responsibility for violating the right to privacy. It is unclear why a violation of this right in an insulting form would be separated from the same offence performed in conventional form, since the level of responsibility remains the same.

As for dissemination of insulting information as such, the abovementioned Article 130 of the Criminal Code of the RK (“Insult”) envisions sufficient punishment for the offender without amendments to the Civil Code RK. Such criminal punishment for the offender, i.e. the very fact of his/her conviction, should serve as the basis for compensation of moral damages for the aggrieved person. Therefore, the offered innovation is redundant as the problem is already resolved by virtue of the Civil Code of the RK.

Along with the noted comments regarding the Civil Code RK, the exclusion of legal persons from Article 951.1 of the Civil Code RK is to be welcomed. Organizations are obviously unable to feel moral suffering (i.e. humiliation, annoyance, melancholy, anger, shame, despair, physical pain, loss, discomfort, etc); therefore, they do not have the right to seek compensation for such suffering in pecuniary form.

Recommendations

The proposed amendments to the articles of the Criminal Code of the Republic of Kazakhstan should be considered as significantly improving the situation of journalists, but at the same time as half-way measures which do not conform to generally accepted OSCE standards.

The elimination of reference to legal persons from Article 951.1 of the Civil Code of the Republic of Kazakhstan (determination of moral harm) should be welcomed. However, the suggested formulation of Article 143 of the Civil Code seems redundant.