MEMORANDUM

on the

Law of the Republic of Uzbekistan on Mass Media

by

ARTICLE 19
Global Campaign for Free Expression

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Commissioned by the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe

I. Introduction

This Memorandum analyses the "Law of the Republic of Uzbekistan on Mass Media" (the Law), passed by the Oliy Majlis or legislature in 1997.[1]

ARTICLE 19 has a number of serious concerns with the Law. For one thing, it attempts to regulate in a single set of broad provisions all aspects and fields of mass media even though, as we detail below, very different regimes are needed to regulate, for example, the broadcast media and the print media. In addition, certain publication activities which the Law currently does regulate, such as the activities of small Internet publishers and the informal activities of non-governmental organisations, should not be subject to any regulation at all. Other fundamental difficulties include that the Law imposes a responsibility on the mass media amounting effectively to a prohibition on the publication of "false news"; imposes onerous content restrictions on the publication of materials, as well as obtrusive registration requirements, the latter wielded by an "authorised agency" which is almost certainly not independent of government; imposes an overbroad obligation on the mass media to publish corrections or responses; and gives government and courts the power to command publication of certain materials which is entirely inappropriate. We detail these, and some other, concerns below.

This Memorandum first outlines the guarantee of freedom of expression in international law and in the Constitution of the Republic of Uzbekistan. It then analyses various Articles of the Law in detail, offering recommendations for necessary improvements.

II. Relevant Legal Standards and Statements

II.1 International Guarantees of Freedom of Expression

Freedom of expression, a fundamental human right, is protected by Article 19 of the *Universal Declaration of Human Rights* (UDHR),[2] binding on all States as a matter of customary international law. Article 19 of the UDHR states:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

The *International Covenant on Civil and Political Rights* (ICCPR),[3] widely seen as an authoritative elaboration of the rights set out in the UDHR, contains a broad protection for freedom of expression, at its Article 19, in terms very similar to those of the UDHR. Uzbekistan ratified the ICCPR in 1995 and is directly bound by it.

Uzbekistan is a member of the OSCE and signatory to the *Final Act of the Conference on Security and Co-operation in Europe* (Final Act),[4] which sets out human rights

[1] ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.
[2] UN General Assembly Resolution 217A(III), 10 December 1948.
[3] UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.
[4] OSCE, Helsinki, 1 August 1975.

obligations of Members. The Final Act declares that the participating States, "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development". The Final Act also states that the participating States will, "act in conformity with the purposes and principles" of the UDHR.[5]

These OSCE standards have been expanded and elaborated on in subsequent documents. For example, paragraph 9 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (now OSCE)[6] states:

> The participating States reaffirm that
> - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.

In a related vein, paragraph 26 of the same document states:

> The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:
> …
> - access to information and protection of privacy,
> …
> - journalism, independent media, and intellectual and cultural life.

These standards were reaffirmed in 1991 in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow Document).[7]

Freedom of expression is also protected in all three regional treaties on human rights, specifically at Article 10 of the *European Convention on Human Rights* (ECHR),[8] at Article 9 of the *African Charter on Human and Peoples' Rights*,[9] and at Article 13 of the *American Convention on Human Rights*.[10] Although the decisions and statements adopted under these latter systems are not directly binding on Uzbekistan, they do

[5] Principle VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.
[6] 5 June - 29 July 1990.
[7] 10 September – 15 October 1991, para. 26.
[8] Adopted 4 November 1950, in force 3 September 1953.
[9] Adopted at Nairobi, Kenya, 26 June 1981, entered into force 21 October 1986.
[10] Adopted at San José, Costa Rica, 22 November 1969, entered into force 18 July 1978.

provide persuasive evidence of the scope and implications of the right to freedom of expression which is of universal application.

International law does permit limited restrictions on the right to freedom of expression and information in order to protect various private and public interests. For example, Article 19(3) of the ICCPR states:

> The exercise of the rights provided for in paragraph 2 of this article [the rights to seek, receive and impart information and ideas] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputation of others; (b) For the protection of national security or of public order, or of public health or morals.

This article, then, subjects any restriction on the right to freedom of expression to a strict three-part test, which requires that any restriction must be (a) provided by law; (b) for the purpose of safeguarding a legitimate public or private interest; and (c) necessary to secure this interest.[11]

To be "provided by law" implies not only that the restriction is based in law but also that the relevant law meets certain standards of clarity and accessibility. Further, the legitimate interests listed in the ICCPR are not illustrative but are rather exhaustive: national governments may not expand on this list. Finally, the third part of the test, the requirement of necessity, means that even where measures seek to protect a legitimate interest, the government must demonstrate that there is a "pressing social need" for the measures; moreover, the restriction must be proportionate to the legitimate aim pursued and the reasons given to justify the restriction must be relevant and sufficient.[12]

II.2 Constitutional Guarantees

The Constitution of the Republic of Uzbekistan contains wide-ranging protections for freedom of expression. Article 29, for example, provides:

> Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing constitutional system and in some other instances specified by law.

Additionally, Article 30 obligates State bodies, public officials and public associations to "allow any citizen access to documents, resolutions and other materials, relating to their rights and interests". And Article 43 provides that the State "shall safeguard the rights and freedoms of citizens proclaimed by the Constitution and laws". Finally, Article 67 expressly prohibits, among other things, censorship of the mass media.

II.3 Media Freedom

The guarantee of freedom of expression applies with particular force to the media. As is stated in the OSCE's Moscow Document, "independent media are essential to a free

[11] For an elaboration of this test as set out by the UN Human Rights Committee, see *Mukong v. Cameroon*, 21 July 1994, No. 458/1991, para. 9.7.

[12] *Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, 2 EHRR 245 (European Court of Human Rights), para. 62. These standards have been reiterated in a large number of cases.

and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms".[13]

The European Court of Human Rights has made essentially the same point:

> The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest [footnote deleted]. In addition, the court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.[14]

Constitutional courts around the world are in agreement. For example, the Supreme Court of South Africa has recently held:

> The role of the press is in the front line of the battle to maintain democracy. It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal- and inept administration. It must also contribute to the exchange of ideas already alluded to. It must advance communication between the governed and those who govern. The press must act as the watchdog of the governed.[15]

III. Basic Outline of the Law

The Law applies to all mass media, as defined very broadly in its Article 1. Articles 2-4 guarantee, in line with Articles 29, 30 and 67 of the Constitution, mass media freedom including the freedom to search, receive and disseminate information. They also prohibit censorship (including prohibiting any requirement to obtain prior approval for the publication of any material). At the same time, they prohibit publication of certain categories of content. Article 7 gives rights to a range of persons and entities to create mass media outlets, while Articles 11-11.2 cover various contractual matters pertaining to mass media. Articles 11.3-11.4 set out the rights and obligations of founders. Articles 12-17 govern registration matters, applicable to all mass media. Article 25 provides for the obligatory publication of certain official communications. Article 27 contains a somewhat detailed right of denial and response. Finally, Article 28 provides for liability for violations of provisions of the Law.

IV. Detailed Analysis of the Law

IV.1 Definition of 'Mass Media'

The term 'mass media' is defined at Article 1 to include "newspapers, magazines, proceedings, bulletins, news agencies, television (cable and terrestrial) and radio broadcasting, documentaries, electronic and digital communication, as well as state-owned, independent and other periodicals, which have permanent titles".

Analysis

[13] Moscow Document, para. 26.
[14] *Fressoz and Roire v. France*, 21 January 1999, Application No. 29183/95.
[15] *Government of the Republic of South Africa v. the Sunday Times*, [1995] 1 LRC 168, pp. 175-6.

The definition of 'mass media' is extremely broad, apparently reaching virtually every conceivable communication of information, provided only that such communication has a "permanent title". For example, "electronic and digital communication" would appear to include within its reach any form of Internet conveyance of information whatsoever as long as it has some sort of caption which could be counted as a "title". Certainly, this could include small newsletters and other regular and somewhat formalised exchanges of information on the Internet; by terms, it could even apply to individual private emails which contain a subject line. Small print publications by clubs or associations meant solely for their membership would appear to be included, regardless of the size of their print run or circulation – a small bulletin distributed to ten persons, or a flyer distributed on a street corner to passers-by, could be covered. The definition also, of course, covers *all* the mass media, more regularly understood, including print media and broadcast media.

This attempt to regulate all mass media in a single instrument is inappropriate. As stated in a 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 (Joint Declaration of the Special Rapporteurs):

> Regulatory systems should take into account the fundamental differences between the print and broadcast sectors, as well as the Internet. Broadcasters should not be required to register in addition to obtaining a broadcasting licence. The allocation of broadcast frequencies should be based on democratic criteria and should ensure equitable opportunity of access. Any regulation of the Internet should take into account the very special features of this communications medium.[16]

To illustrate just one of these points briefly: it is recognised that the broadcast media may appropriately be subjected to special regulation by virtue of the fact that broadcast frequencies are limited, and in view of the need to ensure that broadcast content is reflective of and serves the needs of diverse groups within the national population. By contrast, the print media simply does not suffer from such a limitation, and therefore regulation of them relating to content or coverage is not justified. Yet the Law is not at all sensitive to this difference in regulatory need. As detailed below, all mass media are subject to identical, and potentially quite onerous, registration and re-registration requirements. All are subject to the same content restrictions. All are subject to the same obligation to publish replies or corrections under certain circumstances.

The Law recognises, so far as the applicability of its substantive provisions goes, the differences between mass media. Furthermore, certain of the kinds of limited publication activities mentioned above (including the very limited publication and distribution of bulletins or flyers, not to mention private Internet communications including email) should not be subject to general media regulation at all.

[16] Adopted 18 December 2003.

Recommendation:

- The definition of 'mass media' should be considerably narrowed so that it reaches only those forms of periodical mass communication which international law recognises may be appropriately subject to regulation.[17]

IV.2 Obligation to Truthfulness

Article 2 provides that the mass media "shall be responsible for truthfulness and reliability of the publicized information in accordance with the procedure, set by the legislation".

Analysis

It is difficult to discern exactly what this provision means. We are not informed as to what the "procedure", or what the "legislation", might be. The term "reliable" is similarly undefined and could be construed very broadly indeed. However, we note that the language of this Article is at least *compatible* with the imposition of liability ("responsible for") for the publication of material that is not truthful or not reliable.

Such liability for publishing "false news" – assuming that this is what Article 2 provides for – is not legitimate under international law. For example, statements by the UN Human Rights Committee, established by the ICCPR, have expressed concern at the presence of false news provisions in national law. In 1995, the Committee noted, in respect of Tunisia, its "concern that those sections of the Press Code dealing with … false information unduly limit the exercise of freedom of opinion and expression".[18] Article 49 of the Tunisian Press Code provides for up to three years' imprisonment for the bad faith publication of false news which has disrupted or is likely to disrupt public order. In 1998, the Committee criticised Armenia for a false news provision which prohibits the publication of false and unverified news reports, breach of which may lead to a three-month suspension of the media outlet's operations.[19]

Of course, all responsible mass media are very much concerned to "get the news right", and employ their best efforts to do so. It is entirely appropriate for the mass media, individually and collectively, to develop voluntary codes of practice governing investigative and other techniques to ensure, as far as is practicable, that they publish responsibly, with every reasonable effort made to check the reliability of what they publish. But it is one thing for the media to regulate itself in this regard and quite another for the government to impose such regulation on them.

Recommendation:

- Article 2's requirement that the press "shall be responsible for truthfulness and reliability of the publicised information …" should be removed from the Law.

[17] We leave this recommendation deliberately somewhat vague, in view of the fact that, at present, the Law is the principal piece of legislation regulating the mass media. As we explain more fully below, the much better approach, as relates to the main modalities of genuinely periodical mass communication – television and radio broadcasting, public service broadcasting, and print – is that there should be separate, and appropriately contextualised, legislation.

[18] *Annual General Assembly Report of the Human Rights Committee*, UN Doc. A/50/40, 3 October 1995, para. 89.

[19] See *Concluding Observations of the Human Rights Committee: Armenia*, UN Doc. CCPR/C/79/Add.100, 19 November 1998, para. 20.

IV.3 Content Restrictions

Article 6 of the Law, entitled "Impermissibility of Mass Media Abuse", imposes a number of content restrictions on all mass media. The mass media may not be used for "the purpose of appeal to violent change of the existing constitutional order; territorial integrity …; propaganda of war and violence, cruelty; of ethnic, racial, and religious hatred; disclosure of state or other secrets protected by law; and committing other criminally liable offenses" (initial content restrictions). The Article also prohibits "assaulting honor and dignity of individuals", as well as the invasion of their privacy. A third provision of the same Article prohibits, among other things, "predicting a case decision before it has been rendered by a court or otherwise influenc[ing] on the court before the decision or sentence has taken its legal effect" (final content restrictions). Violations of any of these restrictions create "legal[] liability".

Analysis

Most of the initial content restrictions comply with international law.[20] We note two substantial difficulties, however. First, the prohibition on the disclosure of State and other secrets is far too broad. "Other" secrets is left undefined, and could be interpreted broadly and abusively to prevent the mass media from publishing information of clear public importance, such as the "secret" facts relating to the income of public officials.

More fundamentally, the prohibition of disclosure of such secrets is simply misplaced in a mass media law. We note that Article 11 of the "Law of the Republic of Uzbekistan on Principles of and Guarantees for Freedom of Information" provides that information relating to "state security" shall be "protected", which is to say, that public officials will generally not provide access to it. We assume that such information would include State and "other" secrets. It is, therefore, the responsibility of public officials to "guard" State and other secrets. This is not, and should not be, the responsibility of the mass media.

Second, the initial content restrictions refer to "criminally liable offenses" set out elsewhere in Uzbekistan legislation. There is no need to repeat these rules with specific reference to the media. Furthermore, some of these may themselves be in violation of international law relating to freedom of expression. For example, ARTICLE 19 is of the view that criminal defamation laws fall into this category. To the extent this is so, this prohibition is in further violation of international guarantees of freedom of expression.

We note that the prohibition on publishing information "assaulting honor and dignity of individuals" has no place in a law specifically regulating the mass media. Rather, it should find its place in a narrowly drawn law of general application relating to defamation, which law should be civil in nature.

[20] Whether all of the legitimate restrictions should be imposed on the extremely wide of range of "mass media" as defined by the Law is another matter. For example, it is highly doubtful whether some, or perhaps any, of them would be properly imposable on private email correspondence. In this context, it is well to reiterate the urgent need to narrow the Article 1 definition of 'mass media'.

We note that the final content restrictions are too broad. While it is recognised that there may be occasions where, in the interests of the fair administration of justice, the mass media may be restricted in what they publish, this exception to the general rule of freedom of the press is quite narrow. In contrast, one of the final content restrictions prohibits not only the "predicting" of a case decision but any information whatsoever which might "influence" the court. Depending on the sensitivities of particular courts, virtually any comment whatsoever on a court case, no matter how benign or how much in the public interest, could run the risk of violating this prohibition. For example, the simple reporting of the fact that a defendant has been criminally charged, inappropriately, for comments criticising local authorities, might be thought to "influence" a court by causing it to reflect on the wisdom of the legislation supporting the charge. Again, the reporting of the custodial abuse of a prisoner might be thought to "influence" a court in the determination of the prisoner's guilt or innocence on the underlying charge. Yet reports of this sort are of clear public interest and cannot reasonably be held to interfere with the administration of justice.

Recommendations:

- The prohibition on the publication of State and other secrets should be removed from the Law.
- The restriction on publishing defamatory material should be removed from the Law; instead, defamation should be addressed through a civil law provision of general application**.**
- The final content restrictions should be amended to prohibit the dissemination of information only where such dissemination would, or would be highly likely to, substantially interfere with the administration of justice.

IV.4 The Registration Regime

The Law requires every mass media outlet to be registered, as a condition of its publishing. Article 13 provides that the application registration must contain, among other things, information on the "objectives and purposes", as well as the "target audience", of the proposed publication. That same Article provides that re-registration "shall be oblig[atory]" whenever any of the registration application data have been "altered", except that, "if the alteration is not significant, the registering body *may* decide the new registration of the mass media unnecessary" (emphasis added).

Registration applications may be denied, according to Article 15, if, among other things, "the objectives and purposes of the mass media outlet contradict the Constitution of the Republic of Uzbekistan and the present Law".

Article 17 provides that "dismissal of the state agency to register the mass media" – which we understand to mean the refusal by a State agency to register an applicant – may be appealed to the court.

According to Article 16, one of the grounds for the revocation ("discontinuation") of registration is the "systematic non-observance … of the legislation on mass media". The "authorised body" must appeal to a court to terminate the activities of the outlet.

Article 14 excepts certain entities from the requirement to register. These include State authorities and others "which publish all statutory acts" and other official documents, and "enterprises, agencies, organizations (including educational and

research establishments), which publish informational materials and documents, which are necessary for their activity …". Further, this Article exempts from registration the "producing, by the technical means, of printed, video and audiovisual production not for mass dissemination and copied in the form of handwriting, except for the instances envisaged by the legislation".

The Law is silent on the matter of composition or status of the authorised agency.

Analysis

Under international law, *technical* registration requirements for the print media, properly defined as mass circulation, periodical publications, do not, *per se*, breach the guarantee of freedom of expression as long as they meet the following conditions:

- there is no discretion to refuse registration, once the requisite information has been provided;
- the system does not impose substantive conditions upon the media;
- the system is not excessively onerous; and
- the system is administered by a body which is independent of government.

However, registration of the print media is unnecessary and may be abused, and, as a result, is not required in many countries. ARTICLE 19 therefore recommends that the print media not be required to register. Indeed, as noted in the Joint Declaration of the Special Rapporteurs:

> Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.[21]

The registration system established under the Law dramatically fails to meet the minimum conditions noted above and, as a result, breaches the right to freedom of expression. First, it applies across the board to all mass media except those covered by Article 14 – a very small number and narrow type, as we detail below. Yet, as we have explained, a great many types of "mass media" under the terms of the Article 1 definition – small Internet publishers, many users of email, small print publishers which publish for their membership, distributors of certain kinds of leaflets – simply should not be subject to any form of registration requirement *at all*. Furthermore, *broadcasters* in Uzbekistan, we have been informed, are subject to an independent requirement to obtain licenses, which requirement includes a complex and time-consuming application process. It is improper to subject such broadcasters to the duplicative burden of registering as well. Among other things, with such a duplicative system, it is possible that a broadcaster could obtain a license to broadcast but not a registration permit, a potentially worrisome result indeed.

Second, the Law's registration system grants the authorised agency the right to refuse registration or to revoke it based on the content of the proposed publication or broadcast. For example, and as noted, the application for registration must specify

[21] Note 16.

both the objectives and purposes of the mass media outlet and its target audience,[22] and registration may be denied if such purposes "contradict the Constitution". These open-ended provisions vest immense power in the authorised agency to deny registration applications whenever it judges that the proposed content is somehow objectionable. Because registration is a prerequisite to publishing, the agency is effectively free to block the establishment of a newspaper based on its own interpretation of what the Constitution requires. Equally, the agency would appear to be free to deny registration in the event that it simply disapproves a target audience. The power to revoke registrations for "systematic non-observation of" the Law is also highly problematic, in no small measure because some of the "abuses" of freedom of mass communication listed in Article 6 are themselves illegitimate restrictions on the right to freedom of expression (as discussed above).

Third, not only does the Law impose a fairly onerous application procedure, replete with the potential for significant fees,[23] and arbitrary denials and revocations. It also requires re-registration – including running the risk again of an arbitrary denial, as well as incurring another fee – for any alteration in the facts contained in the original registration application, subject to the authorised agency releasing the mass media outlet from the obligation to re-register if it determines that the change is not "significant". This adds another considerable level of discretion to the already-overbroad discretion granted to the authorised agency. The agency is never *required* to waive the re-registration requirement, no matter how minor the change in the facts of the original application; it merely has the power to waive it. Under these circumstances, there is a significant risk that mass media outlets will refrain from publishing materials which could conceivably displease the agency.

Fourth, two of the exceptions in Article 14 are very difficult to understand, and accordingly problematical. The exception for "enterprises, agencies, organisations … which publish informational materials and documents, *which are necessary for their activity*" [emphasis added] is quite obscure and therefore provides for the possibility of abuse of discretion by the authorised agency. The Article 14 exception for "producing, by the technical means, of printed, video and audiovisual production not for mass dissemination and copied in the form of handwriting" is so narrow as to be negligible, apparently applying only to handwritten materials (whatever this implies for video an audiovisual material). Furthermore, this exception may be narrowed even further, in "instances envisaged by the legislation".

We note, however, that Article 14 does nothing to allay our concerns as to the breadth of the coverage of the Law due to the wide scope of the definition of "mass media". This would not be of such concern were Article 14 to provide a generous set of exceptions, at least from the registration system.

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[22] It may well be appropriate, in a *licensing* regime, to require a specification of target audience in the application process. This could be a way of ensuring that all audiences in the country, including audiences with special interests (such as minority groups) are served by some or other broadcasters, a worthy goal, given the limited number of frequencies available. But where there is no such limitation, as for print and Internet media, licensing in this way cannot be justified.

[23] The failure of the Law to specify a maximum, and reasonable, fee for registration and re-registration is also potentially problematic as, once again, it leaves the way open to abuse. It would be much better were the Law to specify fee levels, up to a maximum. In no event should such fees exceed the costs associated with administering the registration system.

Fifth, as noted above, the Law fails to specify the composition or status of the authorised agency. We are informed that the authorised agency is in fact an agency of government and hence is in no way independent. Certainly, nothing in the Law remotely suggests that the agency enjoys any independence from governmental pressure. Yet, independence is particularly necessary where a body has the kind of substantive powers relating to the mass media which the authorised agency has here.

Recommendations:

- Ideally, the registration system should be abolished altogether. If it is retained, however, the following principles should apply:
  - It should be applicable only to print periodicals for mass circulation to the general public, which carry news of general interest.
  - Applicants should not be obliged to include information as to their proposed objectives and purposes, target audience or any other substantive matter relating to the content of the proposed media outlet.
  - The authorised agency should have no discretion to refuse registration, once the requisite information has been provided.
  - The Law should specify a maximum registration (and re-registration) fee and should make it clear that in no event should an application fee exceed the costs involved in processing the application.
  - At most, re-registration of a mass media outlet should be required only when there are substantial and material changes to its registration application data.
  - The independence from government of the authorised body should be guaranteed in law and in practice.

IV.5 'Must carry' Requirements

Under Article 25, mass media founded by State authorities (State-owned media) "shall be obliged to publicisze communiqués of their bodies" (first Article 25 provision). All mass media are obligated to publish "news flashes on public emergencies or communiqués of the authorized state bodies for an immediate warning of the public".[24] Finally, any mass media outlet must publish, without charge, any court decision where the decision itself prescribes such publication in such outlet (third Article 25 provision).

Analysis

Both the first and the third Article 25 provisions go too far.

As regards the first Article 25 provision, certain public information mechanisms, such as a bulletin published by the Ministry of Defence relating to its public activities, may be required to carry Ministry-prescribed material but, as we have noted, such publications should not be included in the definition of mass media. Certain State media may also be directed by their founding statute to focus on certain categories of material. An example might be a public television channel created expressly for the

[24] We assume that the latter category, relating to "immediate warnings", is restricted to matters where it is deemed necessary to inform the public imminently. However, we note that the language employed here is broad, and that it therefore carries with it the potential that government officials might attempt to use it to force mass media to publish or broadcast communiqués which are merely in the government's interest to have disseminated. To the extent this is so, the concerns raised below with respect to the third Article 25 provision apply with full force to the category of "immediate warnings".

purpose of covering meetings of Parliament. But it is a quite different matter to require all State-media to carry the communiqués of their founding bodies, essentially requiring them to perform propaganda functions for these bodies and potentially forcing all State-owned media to serve as government mouthpieces, with no independence at all.

As stated in the Joint Declaration of the Special Rapporteurs: "Media outlets should not be required by law to carry messages from specified political figures, such as the president."[25]

The third provision of Article 25 is also problematic. By its terms, any court may "commandeer" the space or airtime of any mass media outlet, private or State-owned, whenever it so wishes, to publish its decisions, regardless of the length of the decisions or the relevance of the decisions to the mass media outlets concerned. As with the powers of the authorised agency, such open-ended discretion, this time for the courts, is open to quite obvious abuse. While there might be a set of extremely narrow circumstances in which it might be appropriate for a court to order publication of a decision in a particular mass media publication – for example, as part of a remedy for a defamatory statement published by that media – this power, to the extent that it is legitimate, should be part of the general powers of courts to order remedies for breach of the law. It is not appropriate to include an open-ended provision like this in a media specific law.

Recommendation:

- The first and third provisions of Article 25 should be removed from the Law.

IV.6 Right of Reply

Article 27 entitles any legal or natural person to make a demand to the editorial body of a mass media outlet to "issue a denial of the untrue and defamatory information which has been issued by it" (first provision of Article 27). In addition, any such person "whose rights and legitimate interests ha[ve] been infringed" has the right to respond; such response must be published "under a specific heading or in the same column, in which the material in question was published" or "in the same [broadcast] programme" in which the challenged material was broadcast.[26] No editing of a "grounded and correct response" is permitted, except "for the reasons that its volume or time of issue may be unacceptable" (second provision of Article 27). Finally, this Article provides a right of appeal to a court in the event that the mass media outlet refuses to publish the denial or response.

Analysis

This Article contains two distinct remedies: a right to demand a "denial" and a right to demand a "response". The former is typically referred to as a right of correction; this is normally a right to demand that a mass media outlet publish or broadcast a correction of information it has previously published or broadcast, where such

[25] Note 16.

[26] The language in the second sub-article of Article 27 is in fact somewhat confusing. It provides that any person whose rights or interests have been infringed may "issue a denial in that mass media outlet". The next sentence begins "Denial or response…". We understand the Article as follows: the first sub-article provides for what we describe in the text as a right of denial, or correction; the second sub-article provides for a right of response, or reply.

information is incorrect. Article 27 accords such a right of correction specifically in the case of the publication or broadcast of "untrue and defamatory" material. It provides, by contrast, a right of "response" wherever there has been an infringement of a right or a "legitimate" interest. We observe that, since Article 27 of the Constitution recognises a *right* to reputation, persons alleging that untrue and defamatory materials relating to themselves have been published or broadcast in fact are accorded both a right to demand a correction and a right of response.

As the Article itself makes clear, the right of response – or, right of reply, as it is more typically referred to – is a right to demand that a mass media outlet publish or broadcast a responsive statement in the words of the person who has allegedly suffered injury to his or her rights or "legitimate" interests as the result of a publication or broadcast by the outlet. Being a substantially greater interference with the independence of the mass media than a mere right of correction, which is restricted to correcting incorrect facts, a right of reply is a highly disputed area of media law. In the United States, at least as regards the print media, it is seen as unconstitutional on the grounds that it represents an interference with editorial independence.[27] In Europe, in contrast, the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe.[28] In many Western European democracies, the right of reply is provided for by law and these laws are effective to a varying extent.

Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntary rather than prescribed by law. In any case, certain conditions should apply:

- The reply should only be in response to statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader or viewer doesn't like.
- It should receive similar prominence to the original article or broadcast.
- It should be proportionate in length to the original article or broadcast.
- It should be restricted to addressing the incorrect or misleading facts in the original text and not be taken as an opportunity to introduce new issues or comment on correct facts.
- The media should not be required to carry a reply which is abusive or illegal.

We welcome the fact that Article 27 of the Law implies that responses must be "grounded and correct", and that it permits the editing of responses on the basis that they are either not grounded or incorrect, and also for reasons relating to volume (by which we understand length).[29] However, the Article does not go far enough in protecting the mass media from undue and abusive intrusions in this regard. In particular:

[27] *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

[28] Resolution (74) 26 on the right of reply, adopted on 2 July 1974. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

[29] Ideally, mass media would, as part of their voluntary self-regulation, develop appropriate rules, along the lines of those suggested just below, for issuing corrections and for publishing or broadcasting replies. In that event, of course, there would be no need for formal regulation or legislation on this matter.

- As already noted, a right of denial is far less intrusive than a right of response and there may be many circumstances in which a denial (that is, correction) is perfectly sufficient to right any infringement of a right. Accordingly, the article should specify, as a general matter, that a response is available only where a denial cannot reasonably be expected to remedy the legal wrong done.
- It is problematic to provide for a right of response wherever there has been infringement of a "legitimate interest". Rather, the right of response should be available only where a recognised right has been infringed by the publication or broadcast of incorrect or misleading facts. In any case, the Law provides no guidance on what may be counted as "legitimate" and, as we have already noted, where guidance is lacking as to the meaning of a critical term, there is opportunity for abuse.
- In addition to permitting editing for volume, or where responses are not "grounded [or] correct", the Law should also permit, in proper cases, editing of proposed responses, or even the refusal to publish responses altogether. Such cases should include where a response contains abusive language, where it would constitute a punishable offence, or where it would be considered contrary to the legally protected interests of third parties.[30]

Recommendations:

- The Article should provide that a right of denial is the favoured remedy for the publication or broadcast of incorrect facts and that a right of response will arise only where the claimant shows that a denial cannot reasonably be expected to redress the harm done by the publication or broadcast.
- Specific language should be added to the right of response provision of Article 27 which would clarify that only statements containing incorrect or misleading facts which infringe legal rights create a right of response.
- Mass media outlets should be entitled to edit responses, or to refuse to publish or broadcast them altogether, where they contain certain objectionable content, as described above.

IV.7 Contractual Provisions

The Law contains a number of provisions relating to documents and contractual relations of mass media entities. Article 11.1 requires certain details to be present in the "constitutive contract" of the mass media outlet, including such matters as the procedure for the distribution of profits and for reorganisation or liquidation. Article 11.2 requires that a contract be established between the founder and the "editorial body". And Article 11.3 provides for certain rights, of a clearly contractual nature, in favour of the founder: the founder has the right to participate in the management of the outlet in accordance with the constitutive contract, as well as applicable legislation, to participate in profits and losses, to appoint and dismiss the editor-in-chief, and to issue certain types of non-commercial information as provided for in the contract. The founder may not, except in cases provided for in the contract, "censor, review or interfere in the … activity of the editorial body". Additionally, Article 18

[30] See Resolution (74) 26 of Council of Europe, Committee of Ministers, "On the Right of Reply – Position of the Individual in Relation to the Press" (CoE Resolution), Appendix at para. 4. It should also be noted that emerging international practice disfavours granting a right of reply to State and other public authorities. See para. 4(i) of this Resolution.

requires the mass media outlet to act in accordance with its charter (regulations), which charter must be accepted by a majority of the staff.

Analysis
While a general provision limiting the right of founders to interfere with the editorial activities of a mass media outlet is welcome, we question the placement of the other provisions just mentioned, particularly in a law specifically relating to the mass media. We are concerned that detailed provisions of this sort may, for example, subject the media outlet to harmful legal wrangling and otherwise unreasonably restrict its activities. It is not clear, for example, why the right to appoint and dismiss the editor should, by law, belong to the founder. In some cases, media outlets, with the acquiescence of the founder, may prefer a different formula. Furthermore, these provisions relate to the general labour or business aspects of mass media outlets. As such, to the extent that they are legitimate, they should find their place in a labour code, a corporate or enterprise code, or some other legislation of general application.

Recommendation:
- The provisions described above, with the exception noted, should be removed from the Law.

IV.8 Loss of Rights of Founder

According to Article 11.4, founders lose their status as founders if, among other things, they lose their citizenship. The Article also provides that founders may lose their status "in accordance with the legislation" (second provision of Article 11.4).

Analysis
As a general matter, there should be no blanket restriction on mass media ownership based on citizenship. It may be appropriate to impose certain restrictions on foreign ownership of broadcast media based, among other things, on the desire for local control over this public resource, although even here it would not be appropriate to impose a blanket restriction on foreign ownership. On the other hand, it is inappropriate, in our view, to impose such a requirement on other media. It may be noted that foreigners may bring much-needed capital and expertise to the media sector, which should not be deprived of this resource.

The provision on disqualification of founders "in accordance with the legislation" is unnecessary. If other legislation, presumably a law of general application, already provides for their disqualification, there is no need to repeat that here in a media specific law.

Recommendations:
- The blanket restriction on foreign ownership contained in Article 11.4 should be removed from the Law.
- The second provision of Article 11.4 should be removed from the Law.

IV.9 Journalist Inquiries

Article 9 creates, for all staff members of any editorial body, the right to inquire into and investigate events, and to use audio and video recordings in the investigation. The same Article entitles the staff member to express his or her "personal opinion on a

specific event or circumstance", including on a court decision or sentence after they have taken legal effect.

Analysis
Article 9 reiterates general guarantees found under international law and the Constitution of Uzbekistan, which recognise the right of all persons to seek and to disseminate information. However, by restricting this right to staff members of editorial bodies, Article 9 creates the implication that others may not have this right or that it somehow creates the right. A general provision in the media law affirming the right to freedom of the media would be welcome but such a provision must be general in nature and styled as an affirmation of rights, rather than as granting new rights. Normally such a provision would occur at or near the beginning of a law.

Recommendation:
- Article 9 should be either removed from the Law or redrafted in accordance with the comments above.

IV.10 Foreign Mass Media

Article 24 provides: "Production of foreign mass media [within Uzbekistan] shall be disseminated on the grounds of the relevant legislation and provisions of international treaties to which the Republic of Uzbekistan is a part".

Analysis
As with some other provisions critiqued above, Article 24 is unnecessary and may be misleading. To the extent that is simply reiterates matters which are already binding on the media, it is unnecessary. It may also give the impression that the dissemination of foreign media should somehow be regulated and limited. In this regard, it may be helpful to observe that the participating States of the OSCE have affirmed:

> [T]he print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts.[31]

[31] Moscow Document, para. 26.1.