



# LEGAL ANALYSIS OF THE DRAFT LAW ON MASS MEDIA OF THE REPUBLIC OF UZBEKISTAN

**Commissioned by the Office of the Representative on Freedom of the Media along with  
the Office for Democratic Institutions and Human Rights of the Organization for Security  
and Co-operation in Europe**

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## I. Summary of main findings

This analysis of the draft Law on Mass Media of the Republic of Uzbekistan (hereinafter referred to as the draft Law) has been commissioned by the Office of the Representative on Freedom of the Media along with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and delivered by the following group of independent experts: Antonina Cherevko, media lawyer and media development expert, member of the Committee of Experts on Combating Hate Speech (ADI/MSI-DIS) of the Council of Europe; Dr Paolo Cavaliere, Lecturer in Digital Media and IT Law at the University of Edinburgh Law School; Prof Kanstantsin Dzehtsiarou, Professor in Human Rights Law, Associate Dean (Research) of the School of Law and Social Justice, Director of the International Law and Human Rights Unit, University of Liverpool, Editor-in-chief of the *European Convention on Human Rights Law Review*; and Alice Thomas, international human rights and legal expert.

The analysis assesses the compliance of the draft Law with international human rights standards on freedom of expression and freedom of the media as well as with key OSCE human dimension commitments. It is comprised of the following sections: general considerations, status and independence of the media regulator, content restrictions, media registration, suspension and termination of a media outlet, editorial independence and management, state media versus public media system, access to information, protection of journalistic sources, right to reply, accreditation of foreign media, and media self-regulation.

On the positive side, the draft Law defines and prohibits censorship, proscribes media monopolization and introduces some guarantees of media and journalistic freedom. It also promotes gender equality and prohibits discriminatory media coverage.

However, a number of the draft Law's provisions raise concerns, as they do not correspond to the internationally recognized freedom of expression standards and good practices in the OSCE region.

In particular, the draft Law needs to provide more clarity with regard to the status and roles of public authorities where it concerns media regulation. Regulatory powers should be clearly and exhaustively defined and a legitimate media regulator should enjoy political, functional, managerial and financial independence.

Certain content restrictions proposed in this draft legislation are highly problematic from the point of view of freedom of expression, since they do not seem to pursue a legitimate aim and are not formulated in a clear and precise manner. In particular, the use of overbroad terms such as "extremism", "fundamentalism" or "fanaticism" should be avoided. Generally, states should refrain from imposing controversial, undue and excessive limitations on media content.

Media registration should be accessible and conducted in a way that avoids potentially biased or arbitrary decisions. The registration of print and online media may be conducted on a voluntary basis. At the same time, sufficient legislative safeguards are necessary against an

arbitrary termination of media outlets. Editorial independence should be enhanced via the minimization of state interference with the internal organization of media business and its operations.

In terms of broader legislative improvements, it is worth considering the introduction of a more holistic and progressive legal framework on access to information, which would also enhance the respective provisions of the draft Law in question. State media mentioned in the draft Law should be reformed and transformed into a public media system or privatized.

Provisions of the draft Law on the protection of journalistic sources and on the right to reply should be formulated with more precision to uphold media freedom and preclude improper implementation. The accreditation of foreign media is unnecessary but should, if retained, only be provided if it is needed for these journalists to obtain additional privileges, such as proactive information on activities of the public bodies. In other words, accreditation should not be used as a restrictive measure but rather as an enabler of journalistic activity.

Finally, pre-trial dispute resolution mentioned in the draft Law can play a positive role in facilitating development and empowerment of the functional media self-regulation system in the country.

In light of the above, the legal framework related to freedom of expression and information should be extensively reviewed to ensure its compliance with international human rights standards and OSCE commitments, while ensuring that any restriction imposed on the right to freedom of expression strictly complies with the tripartite test. The legal drafters should also consider, to the extent possible, consolidating the respective rules and regulations in one comprehensive version of the legislation to ensure better public accessibility and foreseeability.

Further, and as recommended in ODIHR 2015 and 2016 presidential election observation mission reports, as well in ODIHR Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan, of 31 October 2019, the legislation governing the media could be consolidated into one comprehensive law.<sup>1</sup>

## **II. Specific recommendations**

In the view of the detailed analysis of the proposed legislation outlined below in this document, the following specific recommendations are provided. They are aimed at improving this particular draft Law as well as the regulatory framework for the media in Uzbekistan more generally.

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<sup>1</sup> ODIHR, Limited Election Observation Mission Final Report – Republic of Uzbekistan, 29 March 2015, page 15. ODIHR, Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan, of 31 October 2019, par. 22.

- A law on mass media should focus more on providing legal guarantees of media freedom and freedom of expression as well as safeguards against possible violations of media rights by the state and/or private actors.
- Overbroad and vague terminology, such as “extremism”, “fanaticism”, “immoral”, etc., should be avoided in the legislation. Such terms should not be used to formulate legal grounds for restricting freedom of expression and/or freedom of the media.
- Content restrictions are normally included in the general civil and/or criminal laws (such as, the laws on defamation or incitement to violence and/or discrimination). Legitimate restrictions of speech should be formulated clearly and narrowly and are to satisfy the tripartite test (please see the explanation of the test in Chapter A below). In this regard, it is recommended to remove or significantly amend Article 13 of the draft Law, as well as relevant parts of Articles 8 and 20.
- The draft Law and in particular, Article 5 should be revised to ensure that the media regulator enjoys political, functional, managerial and financial independence from political, commercial and other interests. Any regulatory powers should be defined with sufficient precision.
- Articles 15, 20 and 22 should be amended to make the media registration procedure easy and accessible and/or voluntary for the press and online media and to ensure that any grounds for arbitrary and illegitimate termination of a media outlet are removed from the text of the draft Law.
- Editorial freedom and independence should be upheld in Articles 17 to 19.
- The system of state-run media should be gradually transformed into a system of independent and professional public media.
- Access to information should be expanded, preferably via the adoption of a progressive legal framework. State secrecy should not be misused to conceal information of public interest. Exemptions from liability for disclosing confidential information in public interest should be firmly established.
- The protection of journalistic sources should be reformulated as a right, not as an obligation. The right of reply should be limited to factually inaccurate information. More guarantees need to be in place for the media to avoid abuse of the right to reply, especially by authorities.
- Accreditation requirements should not obstruct professional media and journalistic activities; in particular, part 3 of Article 46 should be removed.
- It is recommended to remove Article 45 (part 2) of the draft Law prohibiting foreign donor support to the media.
- Article 49 (part 2) may be expanded to provide further incentives for the promotion of a genuine media self-regulation system in the country.

In light of the above, the legal framework related to freedom of expression and information should be reviewed to secure its compliance with international human rights standards and OSCE commitments, while ensuring that any restriction imposed on the right to freedom of expression strictly complies with the tripartite test. The legal drafters should also consider, to

the extent possible, consolidating the respective rules and regulations in one comprehensive version of the legislation to ensure better public accessibility and foreseeability.

Further, and as recommended in the ODIHR 2015 and 2016 presidential election observation mission reports, as well as in ODIHR Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan of 31 October 2019, the legislation governing the media could be consolidated into one comprehensive law.<sup>2</sup>

### **III. Relevant international standards and analysis**

#### **A. International standards and OSCE commitments**

Freedom of expression and opinion as a bedrock of any democratic society are firmly protected by international and regional human rights mechanisms. The right to freedom of expression, including the right to seek, receive and impart information, is a human right crucial to the functioning of democracy and is central to achieving other human rights and fundamental freedoms. The full enjoyment of this right is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, while bringing visibility to marginalized or underrepresented groups.<sup>3</sup>

Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR)<sup>4</sup> guarantee the rights to *freedom of expression* and opinion.

In particular, Article 19 of ICCPR states that:

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Various other international instruments signed or ratified by the Republic of Uzbekistan also specifically recognize the right to freedom of expression of particular persons or groups, such

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<sup>2</sup> ODIHR, Limited Election Observation Mission Final Report – Republic of Uzbekistan, 29 March 2015, page 15. ODIHR, Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan, of 31 October 2019, para 22.

<sup>3</sup> See eg UN Human Rights Committee: General comment No. 34 (2011), Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, par 2:

<sup>4</sup> [International Covenant on Civil and Political Rights](#) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 19, part 2. Uzbekistan ratified the Covenant on 28 Sep 1995.

as the Article 13 of the Convention on the Rights of the Child (CRC)<sup>5</sup> and Article 21 of the Convention on the Rights of Persons with Disabilities.<sup>6</sup>

Freedom of expression is a fundamental right, which in accordance with international law, notably Article 19 para 3 of the ICCPR, may be legitimately restricted in exceptional cases. Any legitimate restriction of freedom of expression must satisfy the so-called tripartite test, namely:

- *It should be prescribed by law:* any restriction must be formulated with sufficient precision to enable all individuals to regulate their conduct accordingly and must be made accessible to the public.
- *It should pursue a legitimate aim:* those aims are explicitly listed in Article 19, part 3 of ICCPR, namely: respect for the rights or reputation of others, protection of national security, public order, public health, or public morals. Restrictions on other grounds are not permissible under international law.
- *It should be necessary in a democratic society.*

International and regional human rights protection mechanisms assess whether a limitation in question satisfies this third criterion of necessity. Restrictions need to be both necessary and proportional to the pursued aims. As the UN Human Rights Committee has established, any restrictions should be “necessary” for a legitimate purpose, must conform to the principle of proportionality; and be the proportionate and least intrusive instrument amongst those which might achieve their pursued aim. The test of necessity will not be met if the legitimate aim could be achieved in other ways that do not restrict freedom of expression to the same extent.<sup>7</sup>

A legitimate ground for restriction must be demonstrated in a specific and individualized fashion, in particular by establishing a direct and immediate connection between the expression and the specific ground. Furthermore, the grounds must be narrowly interpreted and the necessity for restricting the right to freedom of expression and to impart or receive information must be convincingly established to be compatible with international human rights standards. In addition, laws that impose restrictions on freedom of expression must not violate the non-discrimination principle.<sup>8</sup> Moreover, administrative measures which directly

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<sup>5</sup> The *Convention on the Rights of the Child*, was adopted by General Assembly resolution 44/25 of 20 November 1989. The Republic of Uzbekistan acceded to the CRC on 29 June 1994.

<sup>6</sup> The [Convention on the Rights of Persons with Disabilities \(CRPD\)](#), was adopted by General Assembly resolution 61/106 of 24 January 2007. The Republic of Uzbekistan ratified the CRPD on 8 June 2021.

<sup>7</sup> UN Human Rights Committee (CCPR), General Comment no. 34 on Article 19: Freedoms of opinion and expression, 12 September 2011, paras 33, 34.

<sup>8</sup> UN Human Rights Committee (CCPR), [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, para 26.

limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body and subject to appeal before an independent court or other adjudicatory body.<sup>9</sup>

While the Republic of Uzbekistan is not a Member State of the Council of Europe (hereinafter “the CoE”), the *European Convention on Human Rights and Fundamental Freedoms* (hereinafter “the ECHR”), the developed case law of the European Court of Human Rights (hereinafter “the ECtHR”) in the field of media freedom, and other CoE’s instruments may serve as useful reference documents from a comparative perspective.

The criterion of necessity is also unfolded in the case-law of the ECtHR<sup>10</sup> which requires the existence of a “pressing social need” to impose certain limitations to the right. Additionally, any restrictive measures applied should be proportionate to the aim sought and reasons adduced to justify an interference with the right should be “relevant and sufficient”.<sup>11</sup>

In terms of permissible restrictions of freedom of expression, Article 20 of ICCPR also prohibits propaganda for war and “*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*”.

It is widely recognised in international human rights law that freedom of expression “*embraces even expression that may be regarded as deeply offensive*”.<sup>12</sup> The ECtHR has likewise specified that the right does extend “*not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population*”.<sup>13</sup>

Freedom of the media is derived from freedom of expression, since the media and journalists are regarded as important ‘deliverers’ of public interest information and facilitators of public debate. The UN Human Rights Committee authoritatively noted that:

*[t]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.*<sup>14</sup>

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<sup>9</sup> International Mandate-holders on Freedom of Expression, [2015 Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#), 4 May 2015, para 4 (a).

<sup>10</sup> Although the Republic of Uzbekistan is not a Member State of the Council of Europe (CoE), the reference to the ECtHR and its case law may serve as a useful source of information for the purposes of comparison. Furthermore, where relevant, the opinions and publications of the European Commission for Democracy through Law of the CoE (Venice Commission) can also serve as useful guidance.

<sup>11</sup> *Zana v. Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) para 51.

<sup>12</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 11.

<sup>13</sup> *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976), para 49; *Lingens v Austria* App no 9815/82 (ECtHR, 11 October 1984), para 41.

<sup>14</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 13.



The UN Human Rights Committee further proceeded to advise on the appropriate general approaches to media regulation:

*Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. [...] States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audio-visual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.<sup>15</sup>*

With regard to the pressing issue of disinformation and “fake news”, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media (RFOM), the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereinafter referred to as Special Mandates or SM) stated that:

*General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are incompatible with international standards for restrictions on freedom of expression [...]<sup>16</sup>*

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As far as the Organization for Security and Co-operation in Europe (hereinafter referred to as the OSCE) is concerned, freedom of expression and freedom of the media constitute essential parts of the organization’s human dimension commitments. The Helsinki Final Act proclaimed the aim to facilitate the freer and wider dissemination of information of all kinds.<sup>17</sup>

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<sup>15</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 39.

<sup>16</sup> [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), adopted by the UN Special Rapporteur on Freedom of Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017.

<sup>17</sup> CSCE/OSCE, [Helsinki Final act of the 1st CSCE Summit of Heads of State or Government](#), 1 August 1975.

In the Concluding Document of the 3<sup>rd</sup> Follow-up Meeting in Vienna, in January 1989, participating States committed to:

*allow individuals, institutions and organizations [...] to obtain, possess, reproduce and distribute information material of all kinds,*

and

*take every opportunity offered by modern means of communication, including cable and satellites, to increase the freer and wider dissemination of information of all kinds.*<sup>18</sup>

In the 1990 Final Document of the Copenhagen meeting on the human dimension of the OSCE, participating States reaffirmed that:

*(9.1) – 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.*

and

*(10.1) – respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information.*<sup>19</sup>

In the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (concluded on 3 October 1991), participating States further “*recognized that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.*”<sup>20</sup>

In 1999, in the Charter for European Security participating states committed to ensure “*unimpeded transborder and intra-State flow of information*”.<sup>21</sup>

During its meeting in Basel, on 4-5 December 2014, the OSCE Ministerial Council reaffirmed that:

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<sup>18</sup> [Concluding Document of the Third Follow-up Meeting](#), Vienna, 19 January 1989, paras 34-35.

<sup>19</sup> CSCE/OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990.,

<sup>20</sup> CSCE/OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, par. 26..

<sup>21</sup> [Charter for European Security](#), Istanbul 1999, para 26.

*[...] freedom of information and access to information foster openness and accountability in public policy and procurement and enable civil society, including the media, to contribute to preventing and combating corruption, the financing of terrorism, money laundering and its predicate offences.<sup>22</sup>*

In Milan, in December 2018, the OSCE Ministerial Council urged participating States to:

*fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers*

and

*[b]ring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference;<sup>23</sup>*

## **B. Analysis**

### **1. General considerations**

The draft Law represents a regulatory attempt in a convergent media environment. Traditionally, different sectors of the media market have been subject to differentiated levels of regulation, with broadcasting constituting the most regulated field due to the limited availability of frequencies and the highest impact it still retains over audiences.<sup>24</sup> In contrast, print media enjoyed minimum interference from the side of the State and usually formed self-regulatory bodies to resolve possible disputes to avoid expensive and lengthy court proceedings. The optimal scopes of possible regulation of online content have been increasingly debated by regulators across different continents, and a final agreement on this issue remains to be achieved. Content available on the Internet is, in principle, subject to the same human rights regime as traditional media, such as printed materials and speech.<sup>25</sup> As such, all forms of audio-visual as well as electronic and internet-based modes of expression are protected.<sup>26</sup> Any future regulations responding to the exigencies of contemporary media realities need to continuously guarantee freedom of expression and protect it at the highest

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<sup>22</sup> *Final Document of the Twenty-First Meeting of the Ministerial Council*, Basel, 4-5 December 2014, p. 31. .

<sup>23</sup> [OSCE: Final Document of the Twenty-Fifth Meeting of the Ministerial Council](#), Milan, 6-7 December 2018.

<sup>24</sup> *Animal Defenders International v United Kingdom*, App no. 48876/08 (ECtHR, 22 April 2013), para 119.

<sup>25</sup> See UN Human Rights Council, [2012 Resolution 20/8 on the Promotion, Protection and Enjoyment of Human Rights on the Internet](#), A/HRC/RES/20/8, 16 July 2012, para 1 “the “same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice.”

<sup>26</sup> UN Human Rights Committee (CCPR), [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, para 12.

possible level, with only minimum restrictions permitted. Such restrictions need to be strictly necessary and narrowly defined.

The draft Law aims at establishing certain overarching regulatory structures that would apply to all types of mass media, from broadcasting to online outlets. More specifically, Article 2 provides the scope of the draft Law. However, the wording of this provision is vague with no other indication of connecting factors than the mere accessibility, within the territory of Uzbekistan, of foreign media outlets.

Further, the draft Law should specify that it aims to only regulate professional media, thus excluding from its scope the likes of non-professional publications, personal blogs, social media pages and so on. This can be deduced from explicit requirements in Article 4, like the compulsory registration and a regular distribution, which seems naturally unfit for non-professional outlets, as well as from the circumstance that editorial staff, in the same article, is defined as providing paid services. Explicitly limiting the scope of the law to professional outlets would help ensure better safeguards for Internet users' freedom of expression and would make sure that the draft Law does not impose undue restrictions on them, in line with the general principle that fundamental rights apply equally offline and online, as per the Council of Europe Recommendation on Internet freedom.<sup>27</sup> The UN HRC resolutions from 2012 and 2016 on the promotion, protection and enjoyment of the human rights on the Internet affirmed "that the same rights [...] offline must also be protected online, in particular freedom of expression" and call for "adopting national Internet-related public policies that have the objective of universal access and enjoyment of human rights."<sup>28</sup>

Introducing clearer criteria to define the scope of the law and exclude individual bloggers, social media network users, and other smaller entities seems all the more important in light of the provision of Article 7 which merely defines online media ('Media presented as website') as: *an information resource on the Internet containing electronic documents and information having undergone editing and pre-publishing and intended for dissemination intact, as well as items covered by copyright and related rights, television, radio, and newsreel programs*. It would be helpful to provide a nuanced definition that gives adequate consideration to the

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<sup>27</sup> Council of Europe Committee of Ministers, 'Recommendation CM/Rec(2016)5 on Internet freedom', adopted on 13 April 2016. The European Court of Human Rights has also acknowledged that 'important benefits can be derived from the Internet in the exercise of freedom of expression'. *Delfi AS v. Estonia* [GC], no. 64569/09, ECtHR 2015, para.110.

<sup>28</sup> See the UN, OSCE and Organization of American States (OAS) Joint Declarations on: Freedom of expression and the Internet (2011); Universality and the right to freedom of expression (2014); Freedom of expression and "fake news", disinformation and propaganda (2017); Media independence and diversity in the digital age (2018); Challenges to freedom of expression in the next decade (2019), Freedom of Expression and Elections in the Digital Age (2020) and the Joint Declaration on Politicians and Public Officials and Freedom of Expression (2021). See also the ODIHR newest publication on the topic: <https://www.osce.org/files/f/documents/4/1/500581.pdf>

state of the media industry today, which is more diverse than ever and characterised by the presence of new actors of different sizes and (business) models.

Useful guidance in this respect comes from the Council of Europe Recommendation on a new notion of media,<sup>29</sup> which provides indicators to capture the multiform reality of the media industry today and develop a regulatory framework with different levels of duties and responsibilities, proportionate to the size and power of the different outlets.

Article 3 of the draft Law provides for the prevalence of the international agreements of the Republic of Uzbekistan over the national legislation which is a positive declaration reaffirming Uzbekistan's recognition of the international human rights commitments, including in the field of freedom of expression and freedom of the media. It is, however, necessary that legal provisions like Article 3 are properly understood and applied in practice by the administrative bodies and the judiciary so that their effect is real rather than declarative. There is, however, a certain lack of clarity inherent in the wording of Article 3, which starts by stating that "mass media legislation shall consist of this Law and other legislative acts". It is advisable to specify or cross-reference the legislation, which will apply to media, to facilitate implementation of the draft Law once adopted.

It is also positive that the draft Law defines and prohibits censorship, proscribes media monopolization and introduces some guarantees of media and journalistic freedom (in Chapter 2 and in Chapter 5). However, a number of reservations with regard to those guarantees cause legitimate concerns, which will be discussed in detail in the respective sub-chapters of this analysis.

In Article 44, the draft Law promotes gender equality both inside media houses and in media materials, which is welcome in principle. It is however recommended to promote equality issues inside media companies and in media reporting more broadly, such as through awareness raising campaigns or trainings, so that media materials properly reflect and advance social diversity and understanding. It is further worth emphasizing that the Republic of Uzbekistan is also a member of the UN International Telecommunication Union (ITU). In light of the recent [2018 ITU Resolution 70 on Mainstreaming a Gender Perspective in ITU and Promotion of Gender Equality](#),<sup>30</sup> ITU Member States were called upon to take a number of measures to mainstream gender and promote gender equality in the telecommunications and ICT fields. While one must be cautious with regulating media content, and indeed as a principle should refrain from extensive regulations in this regard, encouraging media to promote gender equality is a welcome step. However, and in respect of Article 44, part 4, it

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<sup>29</sup> Council of Europe Committee of Ministers, 'Recommendation CM/Rec(2011)7 on a new notion of media', adopted on 21 September 2011.

<sup>30</sup> See <https://www.itu.int/en/ITU-D/Digital-Inclusion/Documents/Resolutions/RESOLUTION%2070%20%28REV.%20DUBAI%2C%202018%29.pdf>

is problematic from the point of view of freedom of expression to prohibit certain speech outright, without clearly specifying what this kind of discriminatory media coverage would be. These kinds of provisions need to be formulated with precision to avoid arbitrary application of the law that could potentially lead to unjustified restriction of the right to freedom of expression, differential treatment or persecution of oppositional outlets.

The draft Law rightly exempts media and journalists from liability in cases of publication of messages taken from official sources or publication of direct live speech or recordings of live speech (Article 47, part 4).

Article 48 describes in detail what kind of actions may constitute violations of freedom of the media, which is a commendable approach. However, this Article does not refer to any provisions of administrative and/or criminal legislation, which could establish specific liability regimes for infringements of media freedoms, such as, as “obstruction of activities of media outlets by officials”, “undue interference”, “illegal liquidation or suspension”, etc. If there are no such provisions in place, (as it seems to be the case) they should be introduced and the legislation be harmonized.

Article 48 starts by stating that “the following *may be considered* (могут рассматриваться) violations of media freedom” and then lists the types of possible violations, such as “obstruction of activities of media outlets by officials”, “undue interference”, “illegal liquidation or suspension”, etc. This seems to imply discretion to state to qualify or not these actions as violations, which is problematic. Therefore it is suggested to replace “*may be considered*” with “*are considered*” (рассматриваются), as these types of violations of media freedom need be addressed accordingly and effectively by administrative and criminal sanctions.

Interestingly, the law attempts to regulate the use of drones for media purposes in Article 34, though this issue could perhaps be more effectively reflected in laws protecting privacy and personal data and/or air traffic regulation.

Generally, it is, first of all, important to understand how this draft Law will be coordinated and harmonised with any additional existing or prospective regulation in the field of broadcasting, especially given the many challenges posed by the digital switchover, such as the risks of sector monopolization and/or undermining sustainability of local broadcasters, technical accessibility for different social groups etc. The OSCE RFOM developed a comprehensive *Guide to the Digital Switchover*<sup>31</sup> which advises on how to ensure that digitalisation is safe from potential monopolization of the broadcasting sector and arbitrary state regulation, and that in the end, media audiences receive more diverse information and

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<sup>31</sup> [Guide to the Digital Switchover](#), Office of the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe (OSCE), 2010.

not less. Any potential conflicts between this Law and any other legislation regulating broadcasting, including *inter alia* the Law "On Television and Radiobroadcasting" and government regulations concerning digital switchover, should be avoided.

In the definitions section in Article 4, the Law defines inaccurate information as information, news and or materials, which was not verified by the media. This is technically incorrect, since unverified information could be true and vice versa. While the media can perform all necessary checks, there is still some chance that diligently verified information turns out to be false or only partially correct in the future. If not amended, this "presumption of falseness" of unverified information can generate unexpected legal consequences at the implementation stage.

In Chapter 6 of the draft Law devoted to international cooperation in the media field, Article 45 (part 2) prohibits foreign states, foreign governmental and non-governmental organizations, foreign citizens from directly and gratuitously supporting media development in Uzbekistan. This overbroad provision raises serious concerns as it effectively bans any international donor support, sponsorship and advertising to the Uzbekistani media including, for example, via professional training. In this regard, it is worth mentioning the following two considerations. Firstly, media outlets which manage to receive international donor funding should be typically obliged to follow high professional standards of journalism and observe the independence of their editorial policies. Secondly, at the global level, many media outlets have been struggling to monetise their content and achieve necessary levels of financial sustainability in the context of the massive disruption of traditional media business models. Taking into account these considerations, the total prohibition of foreign funding for media may result in less media pluralism, less content diversity and fewer quality media choices for local audiences. It is therefore strongly recommended to reconsider the blanket prohibition of foreign support to media development.

On the other hand, while the intent of making funds available to media outlets is laudable, Article 14 on state support to the media does not specify any objective selection criteria or requirements as to the quality and professionalism of the outlets, which will be receiving such support. Generally, this provision, even if it contains some declaratory guarantees of media independence, should further include clear principles which can guide the allocation of funds to avoid state authorities assigning the funding in politically oriented ways. This can also include provisions on an independent agency that can be entrusted with such allocations or provide recommendations of allocations. For example, media self-regulatory authorities could be engaged in this process.

Furthermore, the following specific concerns with regard to the draft Law should be noted.

## 2. Media regulator: status and independence

Article 5 of the draft Law authorises the Agency for Information and Mass Communications under the Administration of the President of the Republic of Uzbekistan (hereinafter referred to as the Agency) to be the main state authority in the media sector and to perform the functions of a *de facto* media regulator and adjudicator. According to Article 20 of the draft Law, the rules on media registration are to be developed by the Cabinet of Ministers of the Republic of Uzbekistan.

Thus, there are at least two state institutions involved in media regulation according to the draft Law, neither of which satisfy the necessary criteria of independence of a media regulator as prescribed by recognized international standards on freedom of the media.<sup>32</sup> The list of the Agency's official powers in Article 5 is non-exhaustive, which adds further arbitrariness to its status and competences. In this respect it is important to underline that '[a]ll 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 appointment process for members which is transparent, allows for public input and is not controlled by any particular political party'<sup>33</sup> and, even more specifically, '[a]dministrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body'.<sup>34</sup>

The director of the Agency is appointed directly by the president, while deputies are appointed by the presidential administration upon coordination with the president. The legal framework does not ensure the independence of the Agency, contrary to international good practice.<sup>35</sup>

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<sup>32</sup> See UN Human Rights Committee (CCPR), General Comment no. 34 on Article 19: Freedoms of opinion and expression, 12 September 2011. See for comparative purposes also Council of Europe, [Recommendation Rec\(2000\)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector](#) (Adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers' Deputies).

<sup>33</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>34</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and Responses to Conflict Situations', 4 May 2015, clause 4(a), note 9.

<sup>35</sup> See Paragraph 2.a.iii of the Joint [declaration](#) "on Politicians, Public Officials and Freedom of Expression" by the UN SRFO and the OSCE RFOM recommends states to "Ensure that all bodies which have regulatory powers over the media and all public bodies which facilitate freedom of expression are independent of politicians, public officials and commercial players, are accountable to the public and operate transparently."



In this respect it is important to underline that “[a]dministrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body”.<sup>36</sup>

The provision further includes aspects that may be out of place. For example, it provides that the Agency gives trainings to media personnel, which could be done by an industry-led organization. In addition, it foresees that the Agency shall “provide methodological and advisory assistance to mass media actors on issues related to the organization of their activities”. In the absence of specific criteria and precise wording, this would potentially allow the direct intervention of a state body in the operation of media companies and their freedom to organize and determine their own conduct and working routines.

Any legitimate media regulator should enjoy political, functional, managerial and financial independence from the Government, as well as from political, commercial and other interests. Regulatory powers of such regulatory bodies should be clearly and exhaustively defined so that all media actors can safely and confidently predict the possible consequences of their behaviour. It is strongly recommended to amend Article 5 of the draft Law in line with these standards. Such an independent body should have a clear mandate to oversee the media’s adherence to the legal obligations under criteria of transparency, independency and public accountability. The appointment system for members of this body should ensure diversity of the representation and prevent political dependency and conflict of interests.

### **3. Content restrictions**

It is necessary to stress that the list of legitimate aims that justify restrictions of freedom of expression provided in Article 19 of ICCPR is exhaustive and states that freedom of expression can be restricted if this is necessary for respect of the rights or reputations of others or for the protection of national security, public order, or of public health or morals.

The draft Law provides for a rather extensive range of content restrictions, which does not meet the requirements of Article 19 ICCPR. Some of them are highly problematic from a freedom of expression point of view. This primarily concerns restrictions based on grounds that are formulated in extremely vague and overbroad terms, such as: the dissemination of ideas of religious extremism or “fanaticism”, information threatening the “sustainable functioning of the state”, dissemination of personal data with “mercenary or indecent” motives or for the purpose of causing insult or shame (Articles 13 and 20 of the draft Law). There are also prohibitions of obscene or insulting language and requirements that the media

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<sup>36</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, ‘Joint Declaration on Freedom of Expression and Responses to Conflict Situations’, 4 May 2015, clause 4(a), note 9.

use “academic standards” in the language of their publications (Article 8, parts 2 and 4). Additionally, Article 13 contains provisions on defamation, bans the disclosure of state secrets or “other secret information protected by the law” and finally, restricts the dissemination of untrue or false information.

These limitations trigger freedom of expression concerns for several reasons. First of all, the overall goal of democratic media laws should be to establish proper guarantees of media freedom and safeguards against possible violations of this freedom by the state and/or private persons. Legitimate restrictions of speech shall not normally target media in a specific way but rather be of a general nature: for instance, the prohibition of propaganda for war as required by Article 20 of ICCPR concerns not only the media but any natural or legal person. The same could be stated about defamation, which usually is part of civil codes, while the criminalization of defamation has been widely criticized by international bodies.

For example, according to the General Comment 34 of the UN Human Rights Committee: *“Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. ... Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty...”*<sup>37</sup>

Limitations formulated in vague and overbroad terms, such as “extremism” or “fanaticism” will not satisfy the ICCPR requirement “prescribed by law”, since laws need to be formulated with sufficient precision and foreseeability), and must be regarded as “necessary in a democratic society”.<sup>38</sup>

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<sup>37</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 47. See also Council of Europe, Parliamentary Assembly resolution 1577 (2007) of 4 October 2007 towards decriminalization of defamation.

<sup>38</sup> UN Human Rights Committee (HRC), [General Comment No. 34 \(2011\), Article 19: Freedoms of opinion and expression](#), adopted by the Committee at its 102<sup>nd</sup> session (11-19 July 2011), UNDoc. CCPR/C/GC/34, para 46.

It should also be mentioned that there is no consensus at the international level on a normative definition of “*extremism*”, “*violent extremism*” or “*fundamentalism*”.<sup>39</sup> The OSCE/ODIHR, the Venice Commission of the Council of Europe and other international bodies have raised concerns pertaining to “*extremism*”/“*extremist*” and “*fundamentalism*” as legal concepts and the vague and imprecise nature of such terms, particularly in the context of criminal legislation.<sup>40</sup> The vagueness of such terms may allow States to adopt highly intrusive, disproportionate and discriminatory measures,<sup>41</sup> as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called “*extremism*” charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment in the Republic of Uzbekistan.<sup>42</sup>

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<sup>39</sup> See e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter “UN Special Rapporteur on Counter-terrorism and Human Rights”), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras. 11 and 21, noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”.

<sup>40</sup> ODIHR-Venice Commission Joint Opinion on the Draft Law “On Freedom Of Conscience And Religious Organizations”, 12 October 2020 ([https://www.legislationline.org/download/id/8812/file/387\\_FORB\\_UZB\\_12Oct2020\\_en.pdf](https://www.legislationline.org/download/id/8812/file/387_FORB_UZB_12Oct2020_en.pdf)); See also., UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, paras. 12-14; UN Special Rapporteur in the field of cultural rights, 16 January 2017, A/HRC/34/56, paras 10-11; and UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, para. 51, where it is emphasized that “when employed as criminal legal categories, vague terms such as ‘extremism’ and ‘fundamentalism’ are irreconcilable with the principle of legal certainty as well as being incompatible with the fundamental rights mentioned”. See also *op. cit.* footnote **Error! Bookmark not defined.**, pages 31-32 and 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security), which states that “extremism” is “an imprecise term without a generally accepted definition, which leaves it open to overly broad and vague interpretations and opens the door to arbitrary application of the law”; OSCE/ODIHR, [Opinion on the Law on Countering Extremist Activity of the Republic of Moldova](#) (30 December 2019), paras. 13-16; OSCE/ODIHR, [Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan](#) (22 November 2019), paras 12-16; OSCE/ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), paras 21-24; Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, para 30. See also OSCE/ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), paras 100, 205 and 213; OSCE/ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, paras 21 and 31; and OSCE, [Preventing Terrorism and Countering Violent extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), Sub-Section 2.3.1.

<sup>41</sup> See also UN Special Rapporteur on Counter-Terrorism and Human Rights, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, para. 19.

<sup>42</sup> See CCPR, [Concluding observations on the fifth periodic report of Uzbekistan](#), 1 May 2020, CCPR/C/UZB/CO/5, paras. 20-21 and 42; UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to](#)

Several international bodies have recommended to refrain from enacting legal or other measures that are founded on or make reference to concepts such as “*extremism*” or “*religious extremism*”, given the vagueness of these terms and the potential for their misuse in excessively discretionary or discriminatory ways.<sup>43</sup>

As was previously stated in this analysis, freedom of expression covers shocking and/or insulting speech, thus, state authorities should not enforce “politeness” in the national media. Professional ethics should rather be subject to media self-regulation and/or special codes of conducts adopted by the broadcasters. A lack of clarity in these provisions leaves excessive scope for administrative discretion and the respective parts of the draft Law thus fail to comply with key rule of law principles including legal certainty.

Finally, information cannot be restricted solely on the basis of its falsity, as falsity alone does not constitute a legitimate aim to justify the imposition of limitations: this position has been confirmed by the Special Rapporteurs on freedom of expression and freedom of the media in their joint statement on disinformation.<sup>44</sup>

It is, therefore, recommended to repeal or considerably amend Article 13 and the respective parts of Article 8 and 20 and avoid imposing undue and excessive limitations over media content. Please see Annex to this legal analysis for additional considerations regarding content restrictions provided in the draft Law.

#### **4. Media registration, suspension and termination**

Chapter 3 of the draft Law regulates media registration, suspension of registration, termination and interaction between a media founder(s) and an editorial office/a chief editor.

It is positive that media registration is described as a relatively simple procedure of sending a registration request (notice) to the responsible state authority, namely the Agency under the Presidential Administration (Article 20). It is also a useful legal safeguard that suspension or termination of a media outlet requires a respective court decision (unless a given media is

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[Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, paras. 98 and 101; and UN General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018).

<sup>43</sup> See e.g., *op. cit.* footnote **Error! Bookmark not defined.**, pages 31-32 and 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security); and UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, para. 52 (b).

<sup>44</sup> [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), adopted by the UN Special Rapporteur on Freedom of Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017.

voluntarily terminated by its founder(s)) (Article 22). However, there are problematic provisions in Articles 15 and 20 and in Article 22, which require more detailed consideration.

First, Article 20 states that a specific procedure for media registration “by notice” is to be detailed by the Cabinet of Ministers. It is important that this additional regulation by the Government will not unduly complicate the procedure as it is currently described in the draft Law and will not create unnecessary impediments to media registration. While it is usual for broadcasters to undergo certain licensing procedure to obtain access to frequencies (subject to procedural guarantees and safeguards), registration of the press should in principle be simple and voluntary. In this regard, it is questionable whether the requirement for all media to pay a registration fee (Article 20, part 3) is sufficiently justifiable, especially since the exact amount of the registration fee remains unclear and may turn out to be excessive.

Second, a media outlet could be refused state registration in case its title contains, *inter alia*, immoral, insulting, mocking statements, religious extremism or fanaticism. While certain concerns about the possibility of mass media to promote discrimination and stir hatred or violence could be legitimate and understandable, the aforesaid characteristics are overbroad and rather difficult to define and can lend themselves to extensive interpretation. All of these terms are not defined in the international law nor in the draft law and their use in the proposed legislation, by the Agency or any other responsible body, may eventually lead to abuse and arbitrary refusal of registration.

Article 15 of the draft Law prescribes that media outlets may not be established by “prohibited organisations”: this is a very open-ended provision and its implementation could easily result in an undue interference with media freedom. It would be helpful to clearly list which organisations cannot establish a media outlet or include a reference to the specific legal acts allowing the responsible decision-makers to identify the organisations concerned in this provision.

Where it concerns termination, Article 22 provides for several manners in which a mass media outlet could be dissolved via certain legal action against its founder(s): if a legal person, founder of the media outlet, closes down; if the law bans activities of the founder(s) of a media outlet; or if a founder, being a natural person, loses Uzbekistani citizenship or is sentenced for a crime committed with the use of mass media, information and communication or Internet networks. Those are some of the proposed grounds based on which a court may rule on the termination of a media outlet. In practice, this makes media outlets vulnerable to any external political or financial pressure exerted on their founder(s). Additionally, a court may terminate a media outlet in case its editorial office has become involved in the “abuse of freedom”, which presumably refers to repeated violations of the content restrictions discussed in the respective sub-chapter above and prescribed in Article 13 of the Law. Since many of those content restrictions do not comply with the international freedom of expression standards (please see the preceding sub-chapter and Annex for

details), the termination of a media outlet based on these grounds will not be regarded as legitimate under international human rights law, as it will not satisfy the requirements of the tripartite test.

More specifically, according to the draft Article 22, a court may rule on suspension or termination of a media outlet “if it has not been operating for more than six months”. This provision is unduly restrictive and it is not clear what legitimate aim it serves. While it is understandable that there should be some way of de-registering media outlets that only exist on paper or that do not function for a lengthy period of time, forcing a media company to cease operations after only six months of being inoperative, especially in the current global situation of financial struggle for the printed press, is not justified. Furthermore, this provision is also inconsistent with Article 4 of the Draft Law defining a media outlet as a periodic publication issued ‘at least semi-annually’, which does not appear to exclude magazines that are published only twice a year. At a minimum, the period of inactivity which would trigger suspension or termination should be significantly extended.

With respect to the second sub-ground for suspension or termination, namely, when i.e. the editors have become repeatedly involved in abuse of freedom and the founder and/or media founder is involved [in] activities prohibited by law, there seems to be an inversion of responsibilities. Editors are normally responsible for what is published by a media outlet, but media outlets do not bear responsibility for their editors’ personal conduct. Similarly, it is worth noting that the European Court of Human Rights has stressed how media publishers share the same duties, responsibilities, and also full enjoyment of Article 10 rights as the media personnel they employ the exercise of publishers’ freedom of expression should not be subjected to more conditions than normally expected for ordinary individuals and media personnel, and to attach even more aggravating consequences (such as the termination of a media outlet) to them.<sup>45</sup>

Another problematic aspect of this provision is its open-ended nature, allowing suspension or termination based on ‘other grounds provided by law’. Such broad provisions are unlikely to pass the legality test as provided in Article 19 para 3 ICCPR. The issue with the provision as currently worded does not reside in its interpretation but rather in its inherently undetermined and unforeseeable nature: a mere reference to an open-ended list of other legal provisions (unidentified at present, likely to change through time at any point).

It is, therefore, recommended that Articles 15, 20 and 22 are amended to make media registration procedure easy and accessible or voluntary for the press and online media and to ensure that grounds for arbitrary and illegitimate termination of a media outlet are eliminated from the text of the draft Law.

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<sup>45</sup> See for comparative purposes, ECtHR, *Orban and Others v. France*, application no 20985/05, 15 January 2009, para. 47.

## 5. Editorial independence and management

Chapter 3 of the draft Law also attempts at regulating relationship between a founder(s) and an editorial office/a chief editor of a media outlet. It outlines basic documents needed for founding a media outlet: a founding agreement in Article 17 (this is optional and only required if there are several founders of a media outlet) and a statute of an editorial office in Article 18. There is also a “written agreement between a founder and an editorial office” described in Article 19. All three types of agreements largely concern business and organizational aspects of a media outlet’s work. According to Articles 23 and 25, the chief editor shall be appointed and dismissed by a founder. Both a founder and the chief editor are responsible for ensuring that the media outlet complies with the requirements of the national legislation. It is normally recommended that a state interferes as little as possible with the internal organization of work of a media outlet including via legal regulation. Chapter 3 risks imposing excessive administrative burdens on media outlets and interfering with their freedom to organize media operations and reporting as they see fit. Thus, Chapter 3 may be revised to minimise such interference and avoid imposing unnecessary obligations upon media outlets.

The final part of Article 25 prohibits foreign citizens and stateless persons from occupying chief-editor’s posts in media. This provision does not seem to serve any legitimate aim and is also discriminatory, especially where it concerns stateless persons who are widely recognized to be an especially vulnerable category and given the fact that states are encouraged at the international level to reduce statelessness.<sup>46</sup> In addition, it is not evident why such ban would be necessary in a democratic society. The lawmakers are recommended to amend the draft Law accordingly and delete Theban.

Similar arguments can also be invoked about the prohibition of persons who have been declared legally incapacitated or partly incapacitated to serve as editors-in-chief in Article 25 of the draft Law. The Convention on the Rights of Persons with Disabilities, an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities in Article 12 clearly states that persons with intellectual or psychosocial disabilities shall enjoy legal capacity and participate in political and public life on an equal basis with others, which includes the right and opportunity to vote and be elected.<sup>47</sup> Rather than restrict the legal capacity of persons with disabilities, states should instead protect people with disabilities from all forms of exploitation, violence and abuse and help persons with disabilities exercise their legal capacity, by providing them with access to different types of supported decision-making arrangements. The key decision-makers in Uzbekistan are thus encouraged to review the relevant legislation accordingly.

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<sup>46</sup> [UN Convention on the Reduction of Statelessness](#), 1961.

<sup>47</sup> See: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

## **6. State media v public media**

The draft Law makes references throughout to the state media outlets or media outlets founded by the state. For instance, Article 20 exempts state media from the registration-by-notice procedure if they are founded by a state authority to publish its official messages and regulatory acts; Article 32 obliges state media to publish official messages and materials of the state authorities, thus limiting their editorial independence.

In this regard, it is worth highlighting the pressing need of a systemic reform of state media structures. In particular, state media should be transformed/substituted by an independent and professional public broadcasting system,<sup>48</sup> and state-owned press outlets should be prepared for and assisted in the process of privatisation. The continuous existence of a politically and economically dependent state media framework is neither democratic nor financially efficient.

A public broadcaster should have independent appointment of management, multi-sourced funding and a clearly defined public mandate as well as to provide to provide balanced, fair and impartial reporting in the news.

Paragraph 2.c.i of the joint [declaration](#) “on Politicians, Public Officials and Freedom of Expression” by the UN Special Rapporteur on Freedom of Opinion and Expression (SRFO) and the OSCE Representative on Freedom of the Media (RFOM) recommends states to “Ensure the presence of independent, adequately funded public service broadcasters”.

Serious consideration should be given to undertaking a comprehensive reform in this area.

## **7. Access to information**

The right to seek, receive and impart information is part of the right to freedom of expression, and is fundamental to individuals’ participation in public affairs and in ensuring transparency of government. This right is expressly protected in Article 19 of the ICCPR.

General Comment No. 34 of the UN Human Rights Committee further states that in order to give effect to that right, State parties should enact the necessary procedures by means of freedom of information legislation.<sup>49</sup>

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression reiterated that Governments shall take the necessary legislative and administrative measures to improve access to public information for everyone. Any access to

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<sup>48</sup> UN Human Rights Committee (CCPR), [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, para 16.

<sup>49</sup> UN Human Rights Committee General Comment No. 34, Freedom of Opinion and Expression (Article 19), CCPR/C/GC/34, July 21, 2011. para 19.



information policy must have specific legislative and procedural characteristics, including observance of the maximum disclosure principle, the presumption of the public nature of meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and time limits, independent review of refusals to disclose information, and sanctions for non-compliance.<sup>50</sup>

Legislation which regulates access to information laws should allow for the timely processing of requests for information. Further, authorities should provide reasons for any refusal to provide access to information, while arrangements should be put in place for appeals against refusals to provide access to information, as well as in cases of failure to respond to requests.<sup>51</sup>

Thus access to information should be provided in an easy, prompt, effective and practical manner, facilitating wide-range inquiries, and information requests should not require excessive data in order to be fulfilled.

On several occasions the draft Law refers to the right of access to information of the media and media workers, which is a positive feature of the text. Article 12 (part 5) mentions a general right of the media to seek, gather and impart information. Article 33 states that media are free to make photos and video recordings of the public buildings and places with the exception of a special list of venues outlined in the law (though, given the lack of clarity, and in the absence of a reference to the relevant law, the government's ability to prohibit photo- and video- shooting of certain public places, buildings and structures seems disproportionate and unduly limits the media freedom). Article 39 deals with information requests submitted by the media to the state authorities: a regular time limit for replying to an information request shall not exceed three days, and refusals of access to information requests need to be motivated. Articles 40 to 43 are intended to facilitate the media's interaction with and access to information held by the Parliament, the Cabinet of Ministers, the judiciary and other state bodies and organizations. These provisions constitute a step towards securing an essential right of access to information of public interest by the media but this initiative is not sufficient and could be taken further. It is desirable to reform the existing legislation on access to information with the aim of creating a holistic legal framework in line with international standards and good practices.<sup>52</sup>

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<sup>50</sup> See the Report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Information and Expression, *op cit* note 2, para 32.

<sup>51</sup> See eg OSCE/ODIHR Opinion on draft Laws of the Republic of Kazakhstan on Access to Information, 18 April, 2012, para 11.

<sup>52</sup> Such legal framework could be based on the Council of Europe Convention on Access to Official Documents – the first binding international treaty establishing the minimum good standards of access to information held by public authorities. Another source of inspiration could be a Model Freedom of Information Law developed by the international organization ARTICLE 19. Please see: [Council of Europe Convention on Access to Official Documents](#), Tromsø, 18 June 2009; ARTICLE 19, [Model Freedom of Information Law](#), February 1999.

Further enhancement of access to information is especially needed given that on several occasions the draft Law limits access to or free flow of information because it constitutes a “state secret” or “other secrets protected by the law” (see, for example, part 4 of Article 13, part 3 of Article 39, Article 48). No relevant existing legislation is properly cross-referenced in these cases to clarify the terminology or provide further necessary details. Vague and blanket prohibitions without due reference to the essential role played by the media in a democratic society and its duty to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest may impair freedom of expression.<sup>53</sup> Moreover, it impedes accountability of public administration and curtails open governance. As a minimum, the draft Law should provide that a person is exempt from liability for the disclosure of secret information if the public interest in knowing this information outweighs the potential harm that such disclosure can cause.

#### **8. Specific media rights and duties: protection of journalistic sources, right to correction and/or reply, accreditation of foreign media**

Article 36 of the draft Law states that an editorial office has a duty not to disclose its sources of information or anonymity of a publication’s author(s) if it was requested to keep this information secret. Interestingly, this fundamental right of media and journalists in the draft Law is formulated as an obligation rather than as a right. Nevertheless, it is one of those indispensable guarantees which should be secured to ensure a favourable environment for the media. The second part of this provision would need to be further specified. It seems to aim at establishing a right to protect journalistic sources. However, if and when the editorial office ‘represents’ the sources before court, the consequences, in particular, whether they would be at risk of possibly bearing the consequences of a negative decision on their behalf, is unclear. The European Court of Human Rights has stressed the importance of clear and precise procedural guarantees in the context of protecting journalistic sources.<sup>54</sup>

The right to correction and/or reply is extensively described in Article 38 of the Law. It is crucial to note that according to well-established international standards, the right of reply only concerns inaccurate factual information and is subject to certain exceptions.<sup>55</sup> In other words, accurate information that is of a public interest should not always trigger a right of reply even if it is deemed damaging to a person’s reputation. Ideally, the right of reply should be dealt with within the framework of media self-regulation systems rather than in a law. The European Court of Human Rights observed that, on the one hand, a right of reply is an integral

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<sup>53</sup> *Axel Springer AG v Germany* App no 39954/08 (ECTHR, 7 February 2012), para 79. See <http://hudoc.echr.coe.int/eng?i=001-109034>

<sup>54</sup> *Sanoma Uitgevers B.V. v. the Netherlands* App no 38224/03, (ECTHR, 14 September 2010), para 88.

<sup>55</sup> Council of Europe, *Recommendation Rec(2004)16[1] of the Committee of Ministers to member states on the right of reply in the new media environment* (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies).

component of freedom of expression – to ensure that individuals are able to contest untruthful, possibly defamatory information, state authorities have a positive obligation to ensure its reasonable exercise, and to ensure that, when a newspaper refuses to comply, there is a possibility of redress before domestic courts. However, on the other hand, the Court also noted that ‘as a general principle, newspapers and other privately-owned media must be free to exercise editorial discretion in deciding whether to publish articles, comments and letters submitted by private individuals’ and an obligation of this kind can only be imposed under ‘exceptional circumstances’. Therefore, instead of providing for a broad, unfettered right of reply, which would amount to a disproportionate infringement of editorial freedom, building on the guidance provided by the Court, the draft Law could simply provide for a procedure to check that ‘a denial of access to the media is not an arbitrary and disproportionate interference with an individual’s freedom of expression, and that any such denial can be challenged before the competent domestic authorities’.<sup>56</sup>

Even though Uzbekistan is not a member State, consideration may also be given to other guidance established within the Council of Europe, in particular the Council of Europe Recommendation of 2004,<sup>57</sup> any natural or legal person should be given a right of reply, but national laws should also regulate the cases in which a media outlet could refuse the request. Examples of such exceptions include, among others: if the length of the reply exceeds what is necessary to correct the contested information; if the reply is not limited to a correction of the facts challenged; if the individual concerned cannot show the existence of a legitimate interest; if the contested information is a part of a truthful report on public sessions of the public authorities or the courts. Consideration could be given to amend the draft Law accordingly with similar exceptions.

Article 46 of the Law requires foreign mass media to be accredited by the Ministry of Foreign Affairs of the Republic of Uzbekistan. Though analogical legal requirements are not unusual in the region and beyond, it is important to remember that formal accreditation should not be used as a tool to obstruct media’s professional activities and access to information. Moreover, accreditation rules should not amount to giving journalists a kind of “state permission” to practice their profession. According to OSCE standards, accreditation for foreign journalists is unnecessary but should be provided if it is needed for journalists to obtain additional privileges (for example, to get multiple visas or to receive assistance with permits for staying or to access dangerous places or places with limited capacity, where official press conferences or other official events may be held).<sup>58</sup> The [Communiqué No.4/2016](#) by the OSCE RFOM highlights that “Accreditation should not serve as a tool to

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<sup>56</sup> *Melnychuk v. Ukraine* App no 28743/03 (ECTHR, 5 July 2005).

<sup>57</sup> Council of Europe, [Recommendation Rec\(2004\)16\[1\] of the Committee of Ministers to member states on the right of reply in the new media environment](#) (Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies).

<sup>58</sup> For more guidance see [Report on Accreditation of Foreign Journalists in the OSCE region](#), commissioned by the Office of the OSCE Representative on Freedom of the Media, May 2016, Pages 8-11.

control content, restrict the flow of information across borders, or as a sanction in response to alien propaganda”.

In addition, part 3 of Article 46, which forbids Uzbekistani citizens from working as journalists for a foreign media outlet without accreditation, goes against international freedom of expression standards and should be repealed.

In case accreditation is required, the application requirements should not contain excessive obligations, such as the disclosure of the purpose of the visit or names of local interlocutors. The grounds for denial and withdrawal should be clearly defined and provide for appealing such decisions. Conditions and deadlines for accreditation process should be clear and public. Freelance journalists should also have the right to be accredited.

### **9. Media self-regulation**

Article 49 (part 2) of the draft Law obliges state bodies and organizations to engage in pre-trial resolution of disputes which occurred between them and founder(s) and/or editorial offices of media outlets. This positive provision could be used as an encouragement to develop a functional media self-regulatory system in the country, which could assist in resolving media-related disputes and void burdensome court proceedings.

## **IV. Annex: Additional considerations regarding specific provisions which impose content restrictions**

### **Article 13 of the draft Law:**

- *Propaganda of war, violence and terrorism, as well as ideas of religious extremism, separatism and fundamentalism:* The concepts of separatism and fundamentalism are too vague and lack specific legal meaning. Advocacy for separatism, if non-violent, could be deemed as legitimate political speech and thus worth of the highest level of protection;<sup>59</sup> fundamentalism, again as long as it falls short of

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<sup>59</sup> See for comparative purposes, the European Court of Human Rights in its landmark decision *Handyside v. the United Kingdom* (application no. 5493/72, 7 December 1976, para. 49) stressed that freedom of expression protects ideas that ‘may shock, offend or disturb’, as it is most likely the case with expression that advocates for separatism, religious fundamentalism, and alike. In the following cases the Court stated that mere participating in public debate on the issue of separatism should not be prohibited. In *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, the Court stated: ‘the fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and national

advocating for violence, would equally deserve legal protection as a form of manifestation of religious sentiment and political speech.

- *Disclosure of state secrets or other kinds of secret information classified by law:* Certain information may legitimately be secret on grounds of national security or protection of other interests listed in Article 19 par 3 of the ICCPR.<sup>116</sup> At the same time, as noted in the ODIHR Guidelines on the Protection of Human Rights Defenders,<sup>60</sup> national security is frequently used to justify the over-classification of information, thus limiting access to information of a public interest and creating another obstacle for whistleblowers and investigative journalists trying to bring to light alleged corruption and human rights violations by state actors. States thus may have a legitimate interest in protecting confidential information from disclosure. However, the provision in its current form imposes a disproportionate ban. Article 13 should provide that a person is exempt from liability for the disclosure of secret information if the public interest in knowing this information outweighs the potential harm that such disclosure can cause.
- *Dissemination of ... inaccurate and false information:* As pointed out by international authorities on numerous occasions, most recently by the UN Special Rapporteur on Freedom of Expression, freedom of expression applies 'irrespective of the truth or falsehood of the content'<sup>61</sup> and therefore the 'prohibition of false information is not in itself a legitimate aim under international human rights law'.<sup>62</sup> As a result, this provision should not feature in the draft Law, as it is incompatible with international standards. The same considerations apply to Art 47 (*the editor-in-chief and journalists shall not be responsible for disseminating inaccurate information if obtained from...*), which makes explicit exceptions to the otherwise general principle of media outlets' liability for the dissemination of inaccurate information; and, finally, the definition in Art 4 of inaccurate information as '*information, news and (or) materials that have not been verified by the media*'.
- *Production or dissemination of materials posing threat ... to the sustainable functioning of state, public and other organizations:* This is a particularly broad statement. It is unclear what 'sustainable functioning of state, public and other organisations' means in concrete terms and, therefore, this provision could lend itself to offer a basis for a wide range of sanctions for protected political criticism and disagreement with government policies. It is also not clear why this provision prohibits both the production and dissemination of such information, while other points in the same article prohibit the sole dissemination of content, for instance

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security.' *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECTHR 2001-IX, para. 97.

<sup>60</sup> ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), par 144.

<sup>61</sup> 'Disinformation and freedom of opinion and expression', Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. Human Rights Council, forty-seventh session, 21 June–9 July 2021, para. 38.

<sup>62</sup> *Ibid.*, 40.

in the case of disinformation. It would be preferable to adopt a uniform approach throughout this list.

- *Dissemination of personally identifiable information, including biometric and genetic information, for selfish or other vile purposes, on the basis of enmity, in order to humiliate honour and dignity, shame, insult, and slander:* This provision is worded in a cumbersome manner. While the aim of protecting personal data and information is certainly valid, connecting it with the right to honour and reputation seems unnecessary and likely to complicate things. The mental element required in this draft (the ‘evil purpose’) is unclear as to the precise extent to which *mens rea* is required (if at all) and what the prosecutors would need to show, in regard to the defendant’s intentions and state of mind. Preventing the dissemination of personal data such as biometric and genetic information, and any further information that can lead to harming a person’s reputation, is in and by itself certainly a legitimate aim for restricting freedom of expression under certain conditions.<sup>63</sup> However, the protection offered to private information needs to be weighed against the public interest in accessing information; the case-law of the European Court of Human Rights may provide useful guidance in this respect, in cases where it has identified the relevant criteria to balance the competing rights, such as: whether the publication contributes to a debate of public interest and its form, content and consequences, whether the person affected was already famous and their previous conduct, and the subject of the news report. The Court has accepted that domestic authorities enjoy a margin of appreciation in striking a balance between freedom of expression and the rights to privacy and data protection. It has also accepted that, as a matter of principle, special derogations from data protection laws for the exercise of journalistic purposes are compatible with the ECHR; the interpretation and application of such provisions from domestic authorities however must not be arbitrary or unpredictable.<sup>64</sup>
- *Propaganda of narcotic drugs, psychotropic substances and precursors, unless otherwise provided by law; propaganda of pornography:* The Venice Commission recently noted that terms such as ‘propaganda’ and ‘promotion’, when utilized in legislative texts, are ‘rather ambiguous and vague’ and therefore lack sufficient

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<sup>63</sup> The European Court of Human Rights has acknowledged on numerous occasions that the collection and dissemination of several categories of personal data (both those traditionally deemed as ‘sensitive’ and others, such as for instance traffic and geolocation, employment, financial data) can interfere with Art 8 ECHR and the right to private life. More specifically, the Court has considered that ‘Article 8 of the Convention ... provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy as regards data which, albeit neutral, are collected, processed and disseminated collectively and in such a form or manner that their Article 8 rights may be engaged’, and therefore the ‘domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article’. See for comparative purposes: ECtHR, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, application no. 931/13, 27 June 2017, para. 137.

<sup>64</sup> *Ibid.*, paras. 149-150.

precision to meet the test of legality from Art 10.2 ECHR; the European Court of Human Rights accepted the Venice Commission's opinion and added that such language makes the application of a law unforeseeable and undermines the quality of the law.<sup>65</sup> Limitations to commercial communications advertising medicines and drugs on the one hand, and limitations to the distribution of pornography on the other, are quite common in the comparative perspective in and by themselves, whereas restricting their 'promotion', or the 'propaganda' thereof, seems an unnecessary and altogether too restrictive addition.

- *It shall be prohibited to publish materials of an inquiry or preliminary investigation without a written permission of the prosecutor, investigator or interrogator, to predict the results of a particular case prior to court decision, or otherwise influence the court before its decision comes into legal force:* This provision is excessively restrictive and risks impinging reporters' rights to report on the administration of justice, as well as the principle of fair and public hearings, as protected in 14 ICCPR and Art 6 ECHR. The ICCPR provides that the press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. In its landmark decision *Sunday Times v. UK*, the European Court of Human Rights provided thorough guidance on how national authorities should interpret the interplay between media freedom and the principle of fair administration of justice, explaining that, when the two appears to conflict with each other, what is at stake is not 'a choice between two conflicting principles but [rather the] principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted'.<sup>66</sup> Therefore, the public's right to be informed on ongoing trials and the administration of justice could only be restricted when a sufficiently pressing social needs outweighs it, as in the case where a publication could undermine the authority and impartiality of the judiciary.<sup>67</sup> National provisions prohibiting media publications concerning pending legal proceedings are not in principle incompatible with the Convention or the ICCPR; however, they need to be construed narrowly. An example is the UK's Contempt of Court Act 1981, allowing a publication to be restricted if it 'creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced'<sup>68</sup> – therefore requiring a high threshold of gravity for restrictions to be justified. Therefore, the mechanism should be reversed: reporters should enjoy a default freedom to publish information on court proceedings, unless prohibited by court in exceptional and specific circumstances.

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<sup>65</sup> ECtHR, *Bayev and others v. Russia*, applications nos. 67667/09 and 2 others, 20 June 2017, para. 63.

<sup>66</sup> ECtHR, *The Sunday Times v. United Kingdom*, 26 April 1979, Series A No. 30, 14 EHRR 229, para. 65.

<sup>67</sup> ECtHR, *Worm v. Austria*, application no. 22714/93, 29 August 1997, paras. 40-41.

<sup>68</sup> An Act to amend the law relating to contempt of court and related matters 1981, c.49, s.2(2).

### **Article 32 of draft Law:**

*It is prohibited to disseminate information and materials aimed at creating panic among the population, with the exception of official press releases of state bodies.*

The concept of ‘creating panic’ lacks sufficient precision to meet the legality test set out in Art 19.3 ICCPR. Moreover, the very language of ‘panic’ has a sombre history of being weaponised and abused by public authorities to unduly stifle media freedom: in the midst of the Covid-19 pandemic, the Council of Europe Commissioner for Human Rights criticised a legislative proposal from Bosnia and Herzegovina to punish the circulation of information that could ‘cause panic’ and observed that such a law would ‘risk of limiting the work of journalists and freedom of expression on social media platforms’.<sup>69</sup> Even worse, there are numerous examples of media operators charged on grounds of ‘spreading panic’, ‘disorder’ or similarly vague accounts, including in Bulgaria,<sup>70</sup> Serbia and Armenia,<sup>71</sup> all of which have attracted widespread international criticism.

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<sup>69</sup> Statement by Council of Europe Commissioner for Human Rights, ‘Press freedom must not be undermined by measures to counter disinformation about COVID-19’, 3 April 2020, <https://www.coe.int/en/web/media-freedom/-/press-freedom-must-not-be-undermined-by-measures-to-counter-disinformation-about-covid-19>.

<sup>70</sup> Centre for the Study of Democracy, ‘The Shrinking Space for Media Freedom in Southeast Europe in the Midst of COVID-19 Pandemic and State of Emergency’, 2020, p. 25, <https://www.kas.de/documents/281902/281951/KAS+CSD+Book+on+Media+Freedom+in+the+Midst+of+Covid-19+Pandemic.pdf/8ab73bd6-a65f-4ccf-5cce-826e61c7b092?version=1.1&t=1600864436285>.

<sup>71</sup> Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2021, p. 26, <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>.