



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

Legal Commentary
to the draft Information Security Concept of the Kyrgyz Republic for 2019-202
May 2019

prepared by Dmirtri Golovanov, legal counsel, the Skolkovo Institute of Science and Technology,
(Moscow, the Russian Federation)

Commissioned by the Office of the OSCE Representative on Freedom of the Media

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE as the source.

Executive summary (in English)

Having analysed the draft Information Security Concept of the Kyrgyz Republic for 2019-2023 (further on – the “Concept”), proposed for adoption and implementation in the Kyrgyz Republic, in the context of the provisions of international commitments, in particular, the OSCE commitments in the field of media freedom, recognized by the Kyrgyz Republic, as well as taking into account decisions, standards and recommendations of international bodies and organizations, the Constitution of the Kyrgyz Republic and national legislation, the expert came to the following conclusions.

Among the positive aspects of the document, one can mention its focus on establishing of a modern information environment in which, in addition to traditional means of producing and disseminating information, there are modern communication tools, including the “new media”. In this context, certain priorities of the document are welcome, in particular, the development of modern information technologies, the domestic telecommunications infrastructure, meeting the needs of the domestic market.

The Concept identifies problems with the unsatisfactory state of telecom economy, legislation and law enforcement in the field of information and communications. Thus, the document directs the State and government bodies to understanding and overcoming relevant difficulties.

The expert finds the Concept unduly prioritises an important objective of protecting information security above all others, subordinates relations in the sphere of information to achieving this goal, and often does not take into account the independent interests and the social role of media and communication actors, thus impairing the basic right to freedom of expression and freedom of the media.

The imbalance of the Concept results in the solutions being reduced to administrative and organizational measures, such as increasing the number of supervisory authorities, providing funding for the work related to the implementation of legal and organizational methods of protecting information, *etc.* The Concept does not provide incentives aimed at the development of effective information protection systems.

It is not clear why the Concept is based on the suggested time span (2019-2023) of planning and what outcomes should it bring by its end.

The Concept, despite of its positive aspects related primarily to the formulation of the existing problems in the field of information security, largely contradicts the principles and approaches established in the international law. Some provisions of the Concept diverge from the national legislation on freedom of information and media activities. Internal essential contradictions are in the text of the Concept and do not correlate to the aims put forward.

The Concept needs to be revised.

Recommendations by the expert:

1. Present a more balanced approach to solving information security problems. In the current version of the Concept, considerable attention is paid to measures that are aimed at restricting the dissemination of information. Although this may be necessary, it is equally important that, in accordance with commitments of the Kyrgyz Republic as an OSCE participating State in the field of freedom of expression and freedom of the media, such measures may not become excessive and unduly restrictive to freedoms of citizens in the information sphere. Introduction of restrictions here should be based on prescribed guarantees of their necessity, legality and proportionality, accompanied by an increased control of the civil society over the actions, as well as increased public awareness of the measures taken to counter information threats.

2. Exclude from the Concept the provisions imposing non-intrinsic functions and assigning redundant functions to the state and the mass media. In particular, it is necessary to remove from the document references to the categories of “state ideology” and “state outlook” as having no legal definition. Also, the responsibility for countering the negative information impact on citizens or the responsibility for failure to carry out relevant activities cannot be assigned to information agencies and the media. The opposite would be contrary to the media freedom commitments of the Kyrgyz Republic within the framework of the OSCE.
3. Revise the catalogue of threats and designate them more precisely in order to avoid counteracting phenomena that are not dangerous *per se*. Among them are such threats as interference with distribution of TV and radio channels in the border areas of the Kyrgyz Republic as well as propaganda of mass culture clichés. Although in some cases the impact of these phenomena on the society can indeed be negative, their elevation to general threats to the security is disproportionate and is not found in international law.
4. Implement as a priority of the Concept an active involvement of civil society in the issues of participation in the selection of information security implementation measures.
5. Eliminate the internal inconsistency of the Concept and imbalance, bring the means of its implementation in accordance with the stated goals and expected results.
6. Abstain from using, in the legal context, categories that have no international legal recognition and are not satisfactorily described in legal theory, such as "group and public consciousness", "popular culture", "moral values".
7. Form a specific action plan and spell out requirements for the outcomes of the implementation of the Concept.