

The Penal Code of Kazakhstan no longer punishes defamation – Article 130 was transferred to the Code of Administrative Offenses. Yet, according to the experts, it should have been transferred to the Civil Code, and the Law “On Mass Media” should be completely reformed.

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Claims under Kazakhstan’s Penal Code Article 130 “Slander” are filed against media workers very often. According to the Adil Soz Foundation, in 2019 alone, charges of slander and insult were brought forward 26 times.

One of them was considered in September 2019. The editor of Saryagash Info, Amangeldy Batyrbekov, was sentenced to two years and three months in prison for his Facebook post. He was later acquitted, but the experts note the criminal in its nature sanction negatively affects not only the convicted journalists, but also the entire media community.

In total, over the past 10 years, 88 sentences were passed on the journalists of Kazakhstan under the slander article.

At the second meeting of the National Council of Public Trust in December 2019, the country’s president Kassym-Zhomart Tokayev instructed to decriminalize the slander article by transferring it from the Penal Code to the Code of Administrative Offenses.

This May, OSCE Representative on Freedom of the Media Arlem Désir welcomed the decision of the lower house of the Kazakh parliament to decriminalize defamation.

“The journalists should be able to do their work without a fear of reprisals, and I welcome the fact that Kazakhstan, along with Kyrgyzstan and Uzbekistan, has fulfilled its obligation to decriminalize defamation,” Désir said.

On June 27, 2020, Tokayev signed the respective bill.

Previously, the slander was sanctioned by a fine ranging from 1 to 3000 monthly calculation indices (2,778 tenge or 6.77 US dollars in 2020) and restriction or imprisonment from one to

three years. Now the Code of Administrative Offenses will be supplemented by Article 73-3, Slander [unofficial translation from Russian below - Tr.]:

1. Slander, in other words dissemination of knowingly false details, discrediting the honor and dignity of another person or damaging his (her) reputation -

shall be punished by the fine for an individual in the amount of one hundred and sixty monthly calculation indices (1083 US dollars - *Ed.*) or the administrative arrest for a period of fifteen days, for an official - by the fine in the amount of five hundred and fifty monthly calculation indices (3722 US dollars - *Ed.*) or administrative arrest for a period of twenty days.

2. The same action committed publicly or with the use of mass media or information and communication networks, -

shall be punished by the fine for an individual in the amount of one hundred eighty monthly calculation indices (1218 US dollars - *Ed.*) or the administrative arrest for a period of twenty days, for an official - by the fine in the amount of six hundred fifty monthly calculation indices (4398 US dollars - *Ed.*) or administrative arrest for a period of twenty-five days.



Gulmira Birzhanova. Photo: CABAR.asia

Gulmira Birzhanova, a lawyer at “Legal Media Center” Public Foundation, notes that the media community has long been talking about the decriminalization of slander as it is not right to prosecute people for expressing opinions. The experts suggested moving the article to the Civil Code, as they consider this a civil law relations case, and the Code of Administrative Offences establishes the relations between the state and the individual.

“Nevertheless, we are glad to have what we have, and we hope that the article will stay ‘dead’ and will not be used. For example, according to the experience of Uzbekistan, after the punishment for slander was transferred to the Administrative Code, there were no such cases. Administrative liability cannot be compared to criminal liability; it is less strict. Maybe not that big, it is still a step forward,” said Birzhanova.

In an Internews [study](#) on the needs of the media community in Kazakhstan, an article for slander and possible imprisonment are treated as the main obstacles to freedom of speech. During the survey, the majority of journalists (58.8%) noted in the questionnaires they did not feel protected while performing their professional duties.

The study notes that Kazakhstani journalists face more restrictions and duties compared to the rights and freedoms they can enjoy; the imperfection of the legislation is complicated by the free interpretation of certain articles by state bodies - not in favor of media representatives.

Until recently, an article for slander was one of the three articles of the Penal Code of Kazakhstan that potentially threatened every journalist. The other two are Article 274 "Dissemination of Knowingly False Information" and Article 174 "Institution of Social, National, Generic, Racial, Class or Religious Discord".

Still, most often, the journalists are sued under Article 143 "Protection of Honor, Dignity and Business Reputation" of the Civil Code of the Republic of Kazakhstan. From 2012 to 2020, 662 legal cases were initiated under this article.

The journalists are sued for compensation of the moral harm under this article as well; the amounts reach millions of tenge.

Of recent cases needed to be mentioned, Pavlodar City Court received a lawsuit claim of protection of honor, dignity and business reputation from the businessman Georg Schpeiser. The subject of the claim was a Facebook post by a journalist Alexander Baranov made on April 1.

Despite the fact that the publication contained a statement it was an April Fools' fantasy, all the characters and events outlined were fictitious, and coincidences were random, the entrepreneur regarded it as the dissemination of false information. The plaintiff requires the journalist to refute and pay compensation for a moral damage in the amount of 1 million tenge (2436 US dollars).

In 2019, in total, the journalists were made to pay 9.415 billion tenge (22.93 million US

dollars) out of the demanded 101.5 billion tenge (247.22 million US dollars).

According to Gulmira Birzhanova, the problem of Kazakhstani legislation is in international standards not being applied in the country – such as the principle of tolerance of public figures, according to which they should treat criticism well when it comes to their work, not private life, as well as the principle of socially significant information – a journalist should not be held responsible when it comes to reporting socially significant information.

Now, it is the public personas, officials, public bodies that fill the lawsuits and demand compensation for moral harm. At the same time, the amounts demanded are sometimes sky-high, and the courts side with claimants

“Often, the claims are also filed under article 145, “The Right to an Image”. Although there are amendments to the law on mass media, which state the journalists do not need consent if the person [photographed – Tr.] was at work or in a public place. Nevertheless, the court hearings continue. Now, the practice is such that, under this article, the decisions are made in favor of journalists,” the media lawyer says.

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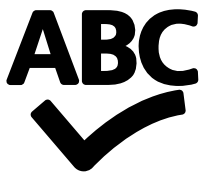


Diana Okremova. Personal photo.

Still, the experts consider censorship through state financing to be the main reason for restricting freedom of speech in the country.

“This is the main problem, because when the media outlet is controlled by money, it is very

difficult to be independent. But at the same time, it was a little easier during the last year, the number of lawsuits and restrictions has decreased. ‘Bold’ materials have become more common, which may be due to the arrival of a new president, but the situation with state financing does not change. Such hidden censorship and self-censorship remain strong,” says Okremova.



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