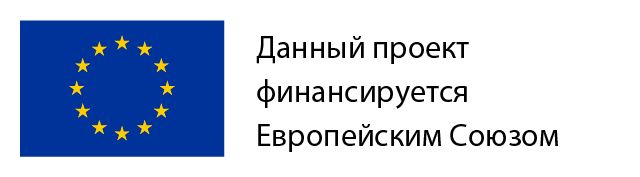
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**Legal analysis of the Law of the Kyrgyz Republic**

**“On the Mass Media”**

Bishkek

2020

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**Foreword**

**Freedom of speech**

“...Freedom of the printed speech develops sciences, raises them to heights, uproots all harmful regulations, curbs the injustice of all officials and is the most reliable protection of the Government in a free state, because it contributes to the love of all people for this way of government…”[[1]](#footnote-1). “...Therefore, a wise Government gives the people the opportunity to express their dissatisfaction with the help of pens and paper, and not with the help of weapons, which, on the one hand, clarifies the situation, and on the other hand, calms and prevents noise and unrest…”[[2]](#footnote-2).

These are quotes from the treatise “Thoughts on Civil Liberty” by the outstanding Scandinavian thinker Peter Forskol. The document was written by a scientist in 1759 and had a tremendous impact on the adoption of the world’s first law guaranteeing freedom of the press in Sweden in 1766.

Subsequently, the law on freedom of the press had been changed three times throughout Swedish history - in 1812, 1949 and in 1982, but the very principle that every Swede has the right to receive and disseminate information without interference from the authorities has remained unchanged. In 1991, Sweden passed the Law on Freedom of Expression (as amended in 2003), which extended the principles of access to information and the right to freedom of expression to all types of media.

The Law on Mass Media, the founding legal act for mass media in Kyrgyzstan, was adopted in 1992. And since the law of the Kyrgyz Republic, in contrast to the Swedish law, does not establish freedom of the press as a principle, we cannot boast that we do not need to reform it.

In general, the fact that the general rules for media work have remained relatively stable and unchanged for a long time was assessed by the sector as rather positive. This contributed to the formation of clear for participants of the process “rules of the game”, in which the media understands the limits of their responsibility, and the state provides a uniform “standard” for the implementation of rights and freedoms. On the other hand, the law is morally outdated, since due to the exponential development of new technologies, the established “rules of the game” no longer protect media players from emerging problems. Despite this, the journalistic community reasonably fears that any of the most advanced initiatives will be restrictive rather than protective for media freedom. One cannot but agree with these fears, since the lack of competition in the Jogorku Kenesh, especially in the last convocation, led to legislative degradation. We are all witnesses to how some laws were passed in parliament: without discussion, without criticism, without evidence. As a result, the law is crude and harmful.

Nevertheless, new initiatives, proposals and their discussion should not be tabooed because the journalist community, on the one hand, has enough opportunities to jointly defend its positions, while authorities, on the other hand, continue to propose initiatives aimed at restricting freedom of speech anyway.

That is why we offer for consideration the legal analysis of the Law “On Mass Media” carried out by our organization.

*Begaim Usenova,*

*Director of the Public Foundation “Media Policy Institute”*

**Introduction**

Freedom of speech and freedom of expression in the Kyrgyz Republic are regulated by a variety of regulatory legal acts, including the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On Mass Media”[[3]](#footnote-3) (hereinafter - the Law of KR “On Mass Media”), the Law of the Kyrgyz Republic “On the Protection of the Professional Activities of a Journalist”[[4]](#footnote-4), the Law of the Kyrgyz Republic “On access to information held by state bodies and local self-government bodies of the Kyrgyz Republic”[[5]](#footnote-5) and others.

However, legislative norms are not always able to protect the rights of the media and journalists due to their imperfection, incompleteness or ambiguous interpretation. Along with some positive changes in the legal field, such as the decriminalization of slander and insults; obtaining permission from the President to initiate a lawsuit by the Prosecutor General “in defense of the honor and dignity” of the President, one should also talk about actual violations and restrictions on the rights and activities of media and journalists in the form of numerous lawsuits, including those that led to the closure of some media outlets (TV “September” and “April”), new legislative restrictive initiatives, political persecution, criminal cases related to hate speech (Articles 299, 313 of the Criminal Code of the Kyrgyz Republic), summons for interrogations, as well as physical attacks on media representatives.

Along with legal issues, the media environment is currently characterized by a low level of professionalism of journalists, non-compliance with standards, limited material resources, and low wages.

International consultant in the field of democratic governance Alban Biosa and Director of the Public Foundation “Media Policy Institute” Begaim Usenova indicate all of the above phenomena as the reason for the self-censorship of journalists in their study “Media institutions as drivers of democracy”, conducted for the Delegation of the European Union in the Kyrgyz Republic. Experts note that the upcoming parliamentary elections in 2020 could provide an opportunity for all media stakeholders to interact with the government on media policy reform and sectoral development. Prior to the elections, a comprehensive analysis and coordination effort will be required among stakeholders in Kyrgyzstan to prioritize reforms and plan for their implementation in the post-election period.

The parliamentary election of 2020 is a renewal of the deputy corps, in this regard, an audit of sectoral legislation to bring its norms in line with the real challenges faced by the media and journalists in practice would be a good start to their legislative activity and a great help for the domestic mass media.

The legal analysis of the Law of the Kyrgyz Republic “On Mass Media” was prepared within the framework of the “Media Dialogue” project funded by the European Union. The meetings and consultations with human rights defenders, media representatives and media outlets were held during preparation of the document. The purpose of the meetings was to identify the main problems in media legislation, discuss ways to solve these problems through changes in regulatory legal acts. A round table with the participation of journalists, representatives of the expert community, lawyers, civic activists and political scientists was organized as well. The goal of the event was to assess the recommendations proposed in the analysis, the possible development of additional tools to build a free, professional and safe environment for the media to function. This document has been accepted by the media community.

Practical examples from the authors ‘and lawyers’ own professional experience are essential features of this analysis. This plays a significant role, since it is on the example of the practical application of the current legislative norms that their weaknesses are manifested to the maximum.

Along with the “Media Policy Institute”, which focused on national legislation and law enforcement practice, Article 19 also analyzed the law of the Kyrgyz Republic on mass media and focused on the compliance of the law with international standards. In its document, Article 19 encourages national stakeholders to consider whether a framework law aimed at regulating all forms of media is a useful legislative tool. The organization’s experts note that there is no doubt that the law of the Kyrgyz Republic on mass media in its current form is flawed in many ways. However, they do not recommend investing time and resources in replacing it with another framework law that is similar in scope and approach. Article 19 believes that a more effective strategy for reforming media legislation would be to focus on developing or improving more specialized legislation on specific types of media or specific media-related issues, as well as non-media legislation that addresses cross-cutting issues of particular importance to the media.

If we talk exclusively about the analyzed legal act, the Law of the Kyrgyz Republic “On the Mass Media” was adopted on July 7, 1992 and put into effect by a resolution of the Supreme Council of the Republic of Kyrgyzstan. At the stage of the formation of national media legislation, he played an undeniable role in the development of the press and television and radio broadcasting. For a long time, the law met the realities of the time and was convenient for all participants in the “market”.

Currently many norms of the law require fundamental changes, there are inaccuracies, gaps and contradictions. Media experts, lawyers and media representatives themselves noted the imperfection of legislative norms. Whether the law should be improved was often discussed in media circles. There were supporters of such transformations, but there were also opponents, who, after all, turned out to be the majority. There have even been several unsuccessful attempts by the country’s parliamentary deputies and officials wishing to include the Internet in the definition of media. Subsequently, a number of other laws and regulations were adopted to supplement the law on the media, including those related to the technical side of television and radio broadcasting, obtaining licenses, etc.[[6]](#footnote-6)

The law on the media has existed until today almost unchanged, with the exception of a few amendments.

The first amendment was adopted on May 8, 1993.[[7]](#footnote-7) It was included in Article 5, which deals with the clarification of the right to establish the media.

The second amendment was adopted on February 22, 2013[[8]](#footnote-8), after twenty years, and changes affected Article 11 “Control and obligatory copies” with the addition of subjects, and Article 12 “Storage of television and radio materials” was completely excluded as unnecessary, since a similar and expanded norm was already included in the Law of KR “On Television and Radio Broadcasting”[[9]](#footnote-9). In 2014, the “Republic of Kyrgyzstan” was replaced by “The Kyrgyz Republic” throughout the text; Article 18-1, mentioning advertising, was added; and, Article 23 expanded the list of information that could not be subject to public dissemination.

Changes to the law were made twice in 2017, in January and May, to Articles 1,3,5,15 and 23.

In May 2018 Articles 1, 5, 6 were amended; the legislators gave the law at least some kind of logic with these amendments, changing the subjects and terms of registration of the media, and some norms completely lost their force as unnecessary (Article 7).

**Related legislation**

Five years after the adoption of the Law of KR “On Mass Media”, the country's parliament adopted two more laws regulating activities of journalists rather than the media. These are the laws of KR: “On the protection of professional activity of a journalist”[[10]](#footnote-10) and “On guarantees and freedom of access to information.”[[11]](#footnote-11) Both laws were passed on December 5, 1997.

The Law of KR “On the protection of the professional activity of a journalist" regulates relations arising in connection with the professional activity of a journalist, defines his rights and obligations, and also provides legal and social guarantees by establishing measures of responsibility.

Considering the content of this law, it can rightfully be considered an addendum to the law of the Kyrgyz Republic “On Mass Media”, in particular to Section IV “Rights and duties of a journalist”. Both laws[[12]](#footnote-12) contain a number of positive elements and provide for almost identical rights. At the same time, they also contain numerous unreasonable restrictions. The content of the restrictive rules is vague and duplicated.

For the first time the professional activity of a journalist was guaranteed in the law on journalistic activity.[[13]](#footnote-13) The definition of the concept of journalist is given and many professional rights of journalists are stated. These are the right to conduct investigative journalism, collect information from government agencies, make notes, attend open court hearings, and join public associations. Access of a journalist to information of public interest, affecting the rights, freedoms and legal interests of citizens cannot be restricted.

The law also stipulates the status of a foreign journalist. He has equal rights and obligations with a local journalist, provided that he has received accreditation in the territory of the Kyrgyz Republic. In carrying out his professional activities, a foreign journalist must comply with the legislation of the Kyrgyz Republic (Article 11).

Interference with the professional activities of a journalist is prohibited by law. He cannot be restricted from access to information of public interest, affecting the rights, freedoms and legitimate interests of citizens. The state ensures the inviolability of his person and protection in the performance of professional activities.

Officials of state bodies, enterprises, institutions and organizations bear individual responsibility for violation of the rights of a journalist: for any act of censorship, obstruction of journalistic activities, unjustified refusal of accreditation, pressure on a journalist, confiscation of journalistic materials and provision of false and biased information to a journalist (Article 13).

The law does not allow the use of the established rights of a journalist to conceal or falsify information and provides him with protection. Materials and documents obtained in the course of a journalistic investigation cannot be seized or searched from a journalist, except in court (Article 9).

All of the above rights of a journalist are essentially declarative and do not have legal support associated with the responsibility of anyone.

Both of the above laws were adopted on the same day and were initiated as additions to the law on mass media. Essentially, both of these laws did not bring any effective results, which could be citing them or referring to popular definitions. The law “On the professional activity of a journalist”, designed to regulate relations arising in connection with the professional activity of a journalist, to determine his rights and obligations, as well as to provide legal and social guarantees, establishing measures of responsibility, in our opinion, was not originally intended to resolve the “deficit” norms that were lacking in the law on the media and that would really work and have clearly defined deadlines and dates.

The same can be said about the law “On guarantees and freedom of access to information”, which regulates relations arising in the process of realizing the right of everyone to free and unhindered information search, reception, research, production, transmission and dissemination. This law does not contain any "numbers", "terms" at all, and some norms have completely narrowed the range of possible access to information, indicating that state bodies, local self-government bodies, public associations, enterprises, institutions, organizations and officials are obliged provide everyone with the opportunity to familiarize themselves with documents, decisions and other materials that affect his rights and legitimate interest.

Like the Law on Mass Media, the act that establishes the general conditions for the activities of mass media in the broadcasting sector is the Law of the Kyrgyz Republic “On Television and Radio Broadcasting” (hereinafter - the “Law on TRB”), adopted in 2008, was amended six times during twelve years of the latest stage in the history of the Kyrgyz Republic; five of these amendments were not significant in terms of regulation. This was the withdrawal from the subject of regulation of the activities of the public broadcaster, the status of which was established by a separate legislative act and others.

The only and very significant exception to all amendments was made in May 2017. The amendments affected 37 out of 48 existing articles of the Law on TRB. A large number of amended articles is justified by the fact that the term "television and radio broadcasting organizations" was replaced by "television and radio organizations". The changes are seemingly insignificant, but this was due to the need for the Kyrgyz Republic to switch to digital broadcasting.

One of the most notable articles for broadcasters, Article 8, was amended, which essentially regulates the information activities of television and radio organizations, determining the percentage of broadcasting of channels in the state and official languages, the proportion of domestically produced TV programs and the time frame for their broadcast. Such a concept as “national audiovisual product” took off from the law, “own production” was replaced by “domestic”. The law was reduced by two articles, one of which was the article allowing cancellation of broadcasting.

Article 9 of the law, listing the subjects of the television and radio broadcasting system, which are authors, manufacturers of audiovisual products, television and radio programs, television and radio broadcasts, television and radio organizations, television and radio broadcasting operators, most of which do not require a license to carry out their activities, has significantly changed.

Probably, the main change around which all the amendments were made, is that the organization of television and radio broadcasting has moved from a licensed activity to permitting one.

We could not fail to mention the Constitutional Law of the Kyrgyz Republic “On elections of the President of the Kyrgyz Republic and deputies of the Jogorku Kenesh of the Kyrgyz Republic” dated July 2, 2011, and if specifically about some amendments that were adopted on June 5, 2017. Article 1 of the law containing the conceptual apparatus introduced three new terms.

*Internet - a global (worldwide) computer network (a system of interconnected computer networks) for storing and transmitting information;*

*Internet publications - an Internet site (portal, forum), in addition to Internet blogs and personal pages of individuals in social networks, containing materials of news, information and analytical, entertainment and other nature, administered (moderated) in the Kyrgyz Republic or owned by citizens and (or) legal entities of the Kyrgyz Republic, allowing free access to it on the Internet for visitors, if the number of visits to the Internet publication exceeds 500 unique visitors per day or 1000 unique visitors per month;*

*A unique visitor or a visitor with a unique IP-address is a non-recurring user with unique characteristics and who has entered the Internet publication within a certain period of time.*

Of course, the authors were most interested in the term “Internet editions”, as it was introduced into other articles of the law by the same amendment, but most of all the term was used in article 22 of the law “Information on elections and election campaigning”. These additions, in fact, legitimized online publications, giving them the opportunity to participate in the presidential and parliamentary elections, along with the media.

*“Agitation can be carried out at meetings, rallies, through the media, as well as online publications. The forms and methods of agitation must comply with the legislation of the Kyrgyz Republic” (Clause 2, Clause 9, Article 22 of the Law).*

However, it is interesting that the legislator, defining the list of means and forms of agitation during elections in paragraph 13 of Article 22, did not include Internet publications, perhaps considering that subparagraph 4 of paragraph 13 covers this concept:

*13. Agitation during elections can be carried out:*

*1) through mass media;*

*2) by holding agitation public events (rallies, meetings, television debates), with the exception of concerts and theatrical performances in stadiums and streets of settlements, as well as sports events;*

*3) by issuing and distributing printed, audiovisual and other agitation materials;*

*4) in other forms not prohibited by this constitutional Law. (Clause 13, Article 22).*

For the most part, in paragraphs 22 of the article, the concept of “Internet publication” occurs, as a rule, after the term “mass media”. In any case, these changes can be considered progressive and conducive to greater pluralism during the election period.

**Definition of concepts in the Law on Mass Media**

The main omission of the legislator in the current version of the Law of KR “On Mass Media” is the lack of a single concept of “mass media”. Also, it is clear that the legislator could not distinguish himself used in the law terms - “founder”, “media outlet”, “editorial office”, and therefore could not give characteristics inherent only to each of these terms. Hence, at one time, absurd norms arose. Considering the above, a natural question arises: who owns the exclusive rights to the media.

The most logical is the legal structure in which all exclusive rights in relation to the media arise only for the person who creates it or acquires part or all of it in the process of activity. Is it the founder or the owner? But there is no mention of the owner in the law at all. Therefore, it is not possible to assess the categories mentioned. The institution of property rights to the mass media is one of the most interesting and complex objects for legal research, which requires independent consideration.

The definition of mass media given in Article 1 of the Law of KR “On Mass Media” is not always fully consistent with the norms of its other articles. This approach can negatively affect the work of the media and allows some subjects of state power to interpret the provisions of this law in different ways. In one case, the media is viewed as an object, and in the other - as a subject of the relevant legal relationship. Newspapers, magazines, one-time publications ... and film and video studios go side by side.[[14]](#footnote-14)

In our opinion, categories such as “books” and “one-time publications”, in no way, should have been included in the category of mass media due to their nature. It is necessary to get rid of these rudiments by eliminating them from the law altogether.

From this perspective, the authors think that when defining the concept of mass media, it is necessary to exclude the enumeration of objects of information legal relations and replace it with a definition with qualifying features or a list of criteria with indicators.

There are probably many options, but two approaches or standards seem more interesting to us. This is the Russian experience and the standards of the Council of Europe, which we will try to disclose.

Studying the experience of countries that are not geographically close to, but rather similar in their legislative nature, let us first consider the Russian experience.

Thus, from the Russian approach point of view, the mass media is understood to be printed, audio, audiovisual and other forms of periodic distribution intended for an unlimited circle of people, which have a permanent name, and are published at least once a year.

The Russian approach has legitimized new media by providing for the possibility of registering online publications, which are understood as a website in the information and telecommunications network “Internet”, registered as a mass media in accordance with the Law.

Here it is necessary to clarify that according to Article 8 of the Law of the Russian Federation “On Mass Media”, a website in the information and telecommunication network “Internet” can be registered as a network publication in accordance with the mentioned Law. A website in the information and telecommunications network “Internet” that is not registered as a mass media is not a mass media. That is, the law allows voluntary registration of online publications, although they, can be said, do not fall under the characteristics of traditional mass media.

*The frequency of publication of media outlets is defined for the print edition and television and radio programs as “at least once a year”. What is the frequency for online publication and how to determine it, the law on mass media does not say, but apparently, the editors of online publications should update the content of the website at least once a year. By the mass nature of information, the law on mass media implies that information (messages, data), regardless of their form, is intended for an unlimited number of people.*

*In addition to the circulation of a separate issue of a periodical print publication or the release of a TV program, the product of a mass media means also a “separate issue or update of a network publication”. Dissemination of mass information implies the mandatory sale (subscription, delivery, distribution) of printed publications, broadcasting (broadcasting) of television and radio programs. This concept also covers the provision of access to online publishing. Thus, dissemination in the Internet is not sending out newsletters, but an opening of access to the website.*[[15]](#footnote-15)

We found the European approach to this issue more interesting due to the depth of study of changes in the media sector, taking into account not only traditional media, but also the arrival of new participants.

In this regard, we suggest to briefly introduce *Recommendations CM / Rec (2011) 7 of the Committee of Ministers to member states on the new concept of media (Adopted by the Committee of Ministers on September 21, 2011 at the 1121st meeting of the permanent representatives of ministers).*

All Council of Europe member states have committed themselves to ensuring to everyone under their jurisdiction the fundamental right to freedom of expression and information, in accordance with article 10 of the European Convention on Human Rights (“the Convention”, ETS No. 5). Such a right is not absolute; it is accompanied by a duty and responsibility and may also be subject to limitations in accordance with clause 2 of Article 10 of the Convention.

The clause 2 of Article 10 of the ECHR is a detailed norm on possible restrictions on the right to freedom of expression, which is clearly relevant to media regulation:

The exercise of freedom of expression, imposes duties and responsibilities, may be subject to certain formalities, conditions, restrictions or sanctions that are provided for by law and are necessary in a democratic society in the interests of national security, territorial integrity or public order, in order to prevent disorder and crime, for protecting health and morals, protecting the reputation or rights of others, preventing the disclosure of information received in confidence, or ensuring the authority and impartiality of justice. This clause is interpreted as a three-component criterion, according to which any restrictions in the countries of the Council of Europe must: a) be provided for by law, b) pursue one of the specified goals, and c) be necessary in a democratic society. It should be noted that these criteria almost completely overlap with Article 20 of the Constitution of the Kyrgyz Republic, which states that “The rights and freedoms of a person and a citizen may be limited by the Constitution and laws in order to protect national security, public order, health and the freedoms of other persons ... The imposed restrictions must be proportionate to the stated goals.”

Historically, norms governing the media have been justified and defined by taking into account the potentially high impact of the media on society and on individual rights; regulation was also one of the means to manage scarce resources in the public interest. Given the importance of the media to democracy, it has been the subject of extensive rule-making by the Council of Europe. The challenge was to ensure the highest level of protection for media freedom and to provide guidance on duties and responsibilities. Any regulation, as a form of interference, must comply with the requirements set out in Article 10 of the European Convention on Human Rights, as well as those norms that follow from the relevant case-law of the European Court of Human Rights.

The Council of Europe has worked many years to develop an extensive body of media standards to assist media policy makers in their necessary efforts to provide the media with the protection they need to function properly.

To this end, based on the existing standards of the Council of Europe, recommendations are given to governments on how to apply media standards to activities, services or actors in new media.

Media policy makers are encouraged to consider the following criteria when analysing whether to treat specific activities, services or participants as media outlets.

Six criteria are described below, each complemented by a set of indicators that, in turn, will enable the government to define media and media activities in the new environment. The degree to which the criteria are met will determine whether the new communication service is truly equal to the media, or will provide an opportunity to determine the degree of influence of intermediary or ancillary activities on media services. Indicators should enable establishing whether a particular criterion is being met, and if so, to what extent. It is not required to meet all indicators in order to establish specific criteria. Some indicators, such as those related to professional standards and media ethics, can be related to different criteria.

*Criterion 1 - Intention to act as a media.*

*Indicators: Self-determination as a media. Working methods typical to the media. Adherence to professional media standards. Practical measures for the implementation of mass communications.*

The intention to act as a media can be expressed by subjective means (for example, one's own statement of work as a media, self-determination, brand name, mission statement, statement of purpose or a business plan that sets out the goals of media or journalism) and can be explicit or even officially registered (as in the case of business registration, when a statement of purpose is made in the company's charter). These subjective indicators may relate to other criteria such as task (for example, decision to distribute regularly updated news), editorial control, or professional standards.

Specifically, intention can take the form of an assertion of a specific editorial policy or a commitment to adhere to professional and ethical standards that are typical to the media.

*Criterion 2 - Purpose and main objectives of the media.*

*Indicators: Produce, aggregate or distribute media content. Operate applications and platforms designed to facilitate interactive mass communications or mass communications in aggregated form (for example, social networks). Periodic replacement and updating of content.*

Despite the changes in the media ecosystem, the purpose and main objective (s) of the media remain largely unchanged, in particular when it comes to providing or distributing content to a wide range of the population and providing space for various interactive activities. The media are the most important tool for freedom of expression.

In order to fulfill the main objective of the media, it is necessary to organize and provide space for public debate and political dialogue, to shape and influence public opinion, promote values, ensure control and increase openness and accountability, and engage in education.

*Criterion 3 - Editorial control*

*Indicators: Editorial policy. Editorial process. Regulation. Editorial workers.*

Editorial freedom or independence is an essential requirement for the media and is directly related to freedom of expression and the right to hold views and receive and impart information, as guaranteed under Article 10 of the European Convention on Human Rights. A number of existing Council of Europe standards contain recommendations aimed at maintaining and developing editorial freedom or independence. The flip side of the coin is its own editorial control over the media, or oversight of content and responsibility for editorial decisions.

*Criterion 4 - Professional standards*

*Indicators: Commitment. Compliance procedures. Complaints procedures. Assertion of prerogatives, rights, or privileges.*

For a long time, the media have gained trust thanks to the competence and professionalism of their employees, in particular journalists. Collectively, they have expressed their commitment to preserving their values ​​in numerous statements, charters and codes, which they seek to promote throughout this area and pass on to their colleagues, in particular newcomers to the profession. Specific media outlets have reinforced this approach through the adoption of internal codes of practice, norms governing employee behavior, or guidelines and codes of procedure and style. Self-regulation also testifies to the importance of media and journalism for our societies, above all for democracy.

In whatever form this may be expressed, adherence to one's own ethical norms, professional ethics and standards is a strong indicator of the media; the standards often cited in this context are truthfulness, responsibility, freedom of expression, equality, fairness and journalistic independence.

In the new media in particular, codes of conduct or ethical standards for bloggers have already been adopted, at least in the online journalism community. However, bloggers should only be considered media if they adequately meet the established criteria.

*Criterion 5 - Scope and distribution*

*Indicators: Real distribution. Mass communications in aggregated form. Scope resources.*

In order to achieve the above objectives, the media strives to reach a large number of people. Mass media have traditionally been defined as public communications addressed to a wide audience and open to all. The scope or actual distribution (circulation, number of viewers or users) is, therefore, an important indicator when defining media and for identifying their differences from private communication, including private communication in a public space (which is not a media itself, however, it can be included in the media or in mass communications in a combined form). However, there is no consensus on what constitutes a mass or broad audience; it could well be a regional community, interest group or other group (for example, the audience that is the target of local, professional or interest-oriented communities) and at the same time up to global audiences (in the case of satellite TV or some Internet services).

The new, rapidly evolving environment allows the media to operate with ease within another medium or to provide duplication between operators, sometimes blurring the lines between them. Therefore, it is so important to distinguish between their respective roles in order to determine their degree of responsibility. It is also important not to over-expand the concept of media by unreasonably including those users who produce or contribute content.

*Criterion 6 - Public expectations*

*Indicators: Availability. Pluralism and Diversity. Reliability. Compliance with professional and ethical standards. Accountability and transparency.*

In general, people recognize the media and rely heavily on them for information and other content. They expect content to be produced in accordance with current professional standards. In a democratic society, the population relies on the availability of a wide range of sources of information and expects their content to be diverse, meeting the interests of different sectors of society. People's expectations have a lot to do with the above criteria (and related indicators). People expect that the media will be accessible and that the media will provide information when the consumer needs it.

Not all criteria have the same weight and value. The absence of some criteria, such as goals and objectives (criterion 2), editorial control (criterion 3) or scope and distribution (criterion 5), would rather preclude the possibility of considering a certain structure as a media. Certain criteria may not be met, such as intentions (criterion 1) or public expectations (criterion 6), or they may not be completely obvious, which should not automatically rule out that the structure will not be considered as a media, but it does matter if these criteria are available.

Having studied the European experience, the authors came to the conclusion that this approach is very flexible and suggests considering the criteria for the media by analogy. Summarizing all six criteria, the European standards give us the following concept of the media: it is a team of journalists working according to professional standards and in compliance with generally accepted ethical norms, having an editorial policy, possibly officially registered as a media (voluntary registration) and having a name, with a wide distribution coverage (provision of) information (circulation, number of viewers or users), frequency and diversity, available information (news release).

Based on the realities of our legislative system and law enforcement practice, it is necessary to pay attention to the “voluntary registration” of online or Internet publications of all the criteria. The opportunity for online publications to register as mass media can provide some positive preferences in their activities. In this case, the key factor should be the voluntary choice of a certain resource, to function as a de jure media.

We decided to consider the pros and cons of the media through the liability that may occur for violation of the Criminal Code, the Code of Misconduct and the Code of Violations of the Kyrgyz Republic.

The Criminal Code of the Kyrgyz Republic has four articles in the dispositions of which there is an additional qualifying feature “using the media” or “when speaking in the media”. Moreover, in three of them “using the media or the Internet”. In two articles of the Criminal Code, where media outlets are not mentioned, the qualifying feature is “on the Internet”. Thus, we see that the concept of “Internet” or “information and communication networks” by the number of qualifying signs of crimes outstripped the traditional media. For all serious crimes, liability may arise in connection with the dissemination of information on the Internet.

***Article 242. Public calls for terrorist activities***

*1.Public appeals to carry out terrorist activities or public justification of terrorism - shall be punished with imprisonment of the II category.*

*2. The same acts committed using* ***the mass media or the Internet*** *are punishable by imprisonment of the III category with the deprivation of the right to hold certain positions or engage in certain activities for up to three years or without it.*

***Article 310. Public calls for the violent seizure of power***

*1. Public calls for the violent seizure or forcible retention of power, as well as for the violent change of the constitutional order, are punished by community service of the IV category or deprivation of the right to hold certain positions or engage in certain activities of the III category, or corrective labor of the III category, or a fine of the IV category.*

*2. The same acts committed:*

*1)* ***using the media or information and communication networks***

*2) by a group of persons by prior conspiracy, - are punished with correctional labor of the IV category or a fine of the V category, or imprisonment of the I category.*

***Article 313. Incitement of racial, ethnic, national, religious or interregional hostility (hatred)***

*1. Actions aimed at inciting racial, ethnic, national, religious or interregional enmity (hatred), humiliation of national dignity, as well as propaganda of the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, national or racial affiliation, committed in public or* ***using means mass media, as well as through the Internet****, - are punished with imprisonment of the III category.*

The only rule that significantly toughens the responsibility for disseminating information only in the media is Article 186 of the Criminal Code of the Kyrgyz Republic. Part two of this article provides - imprisonment of the 1st category.

***Article 186. Violation of inviolability of private life***

*1. Illegal collection, storage, use and dissemination of confidential information about a person's private life without his consent, except in cases established by law, is punishable by community service of IV category or correctional labor of III category, or a fine of IV category.*

*2. Illegal use or dissemination of personal or family secrets in a piece of work, when* ***speaking in the media*** *or in any other public speech, is punished with correctional labor of the IV category or a fine of the V category, or imprisonment of the I category with the deprivation of the right to hold certain positions or engage in certain activities for up to two years or not.*

The Code of Misconduct contains an article on “Deliberately false advertising”, part two of which entails punishment for the same acts “committed with the use of the media”. However, subjects of this offense are advertisers.

Two articles in the Code of Violations mention media in their dispositions, the qualifying feature of one of them forms part of the second. These two norms regulate legal relations during the election period, one of them is Article 44 “Violation of the conditions for the conduct of the election campaign”, the second part of which increases the responsibility if violations of the election campaign were committed in the media. The difference in sanctions for this type of violation between parts 1 and 2 into one category, respectively 4 and 5. The second provision of the Code, article 46 “Dissemination by the media of information discrediting the honor, dignity and business reputation of a candidate” raises many questions and Jogorku Kenesh on this occasion made amendments to change its content.

Thus, Article 46 of the Code of the Kyrgyz Republic on violations states that the dissemination of information by the media that discredits the honor, dignity and business reputation of a candidate or a political party during the period from the appointment of elections to the official publication of election results entails the imposition of a fine and such violations are considered by election commissions. The Central Election Commission already has the practice of recognizing information published in the media as untrue.

At the same time, it is necessary to take into account that cases on the protection of honor, dignity and business reputation belong to the category of “complex” cases and, according to the Civil Procedure Code of the Kyrgyz Republic, are subordinate to district and inter-district courts. Article 18 of the Civil Code of the Kyrgyz Republic empowers citizens and legal entities with the right to demand refutation of information discrediting their honor, dignity and business reputation precisely in court.

Civil liability for infringements on honor, dignity and reputation occurs when three conditions are simultaneously present: first, the disputed information has been disseminated; second, they defame another person; thirdly, they are not true. At the same time, only the court has the right to assess the information, i.e. to recognize them as defamatory, the court must proceed from objective criteria, and not from the assessment of the victims themselves. When resolving disputes about the protection of honor, dignity and business reputation, the courts must ensure a balance between the right of citizens to protect honor, dignity, and business reputation, on the one hand, and other rights and freedoms guaranteed by the Constitution of the Kyrgyz Republic - freedom of thought, speech, mass information, the right to freely seek, receive, transfer, produce and distribute information in any legal way, the right to privacy, personal and family secrets, the right to appeal to state bodies and local self-government bodies on the other hand.[[16]](#footnote-16)

Amendments to the law propose to leave the assessment of the content of information to the court, while securing the right to consider the fact of publication or refusal to publish the answer of a candidate or a political party under the CEC.

In this regard, it would be important to define “Information Agencies” (IA), clearly defining their status. At the same time, it is not easy to give a definition in the conceptual apparatus, but to highlight it in a separate article. In this case, the above criteria for the media can be used based on the experience of the Council of Europe.

The term “Information Agencies” is not disclosed in the law, its content and meaning were laid down by the authors of the law based on an understanding of the circumstances that developed in the early 90s.

Historically, information agencies’ main function has been to collect and supply traditional media - newspapers, magazines, television and radio - with chronicle and official news. They were not assigned a separate role and they were not endowed with independence in the media system. Analytical and scientific publications of the post-Soviet space at the end of the 90s give an ambiguous definition of a information agency, for the most part tending to define them as a body serving the media, which is a source of information for the editors of newspapers, magazines, television, and radio broadcasting.

In the early 2000s, information agencies went through a stage of formation as Internet media, and they still continue to transform, mastering modern mechanisms for delivering content to the consumer. Having created their own websites, they began to transmit messages in an almost continuous stream directly to the end consumer, bypassing publications in newspapers, on radio or television, becoming a source of information for traditional media.

Article 1 of the law mentions programs that are released by information agencies, and Article 26 also refers to this subject of information dissemination as one of the cases of exemption from responsibility of a media body if information was received from an IA. That's all there is to legislation about Information Agencies.

Summing up all of the above we believe, an information agency ideally is, first of all, an editorial office that generates news information, with a network of news bureaus or correspondents in the regions to which the media regime applies.

These are de facto several online publications that can fully claim such an abbreviation in the Kyrgyz Republic.

The authors have identified five leading information agencies operating media:

1) Information agency “AKIpress” has been operating since 2001. According to the information posted on the site itself, the information agency accumulates up to 500 news, 3.000.000 visitors, 500.000 subscribers in social networks every day.

2) Information agency “24.kg”, on its website, indicated 60 thousand unique users daily, which is 1.800.000 visitors per month.

3) The news portal “Kaktus.media” reports more than 1,318,000 visitors who view 12,665,000 pages every month. Over 190,000 visitors and 200,000 views on weekdays.

4) Information agency K-News also positions itself as a news resource. Views collect up to 969,116 per month, or 291,390 pages per week.

5) Kyrgyz National Information Agency (KNIA) “Kabar” is the only state information and analytical institution and coordinator of domestic and international information policy of the Kyrgyz Republic. It was formed on the basis of the KirTAG agency, which was founded in 1937. The agency was the main supplier of official information to other media and the mouthpiece of the government. In 2001 it was transformed into KNIA “Kabar”. The site has no information about users and visits.

The above information resources to a greater extent meet both the criteria of information agencies and the criteria of the media in accordance with European and Russian standards, which we have mentioned above. Moreover, none of them have a certificate of registration as a mass media, which is issued by the Ministry of Justice of the Kyrgyz Republic.

At the same time, everyone tries to comply with the media regime and ethical standards. So, for example, the news portal “Kaktus.media” on its website under the heading *“Call Center” indicated that “here you can leave information about any events that you have witnessed, about everything that happens in Kyrgyzstan. The advantage of this section is that if your information* ***does not contradict the law on mass media****, it will definitely appear on the main page of our website, which means that all our users will know about your news.”* And this is a very positive example, when an information resource, not being a de jure mass media, de facto positions itself as such. Such a demonstration of a legal approach speaks of the editorial understanding of its responsibility.

**Prohibition of censorship**

In accordance with clause 2 of Article 1 of the Law of KR “On Mass Media” “censorship of the media is not allowed.” Article 5 of the Law of KR “On Television and Radio Broadcasting” also prohibits censorship of information activities of television and radio organizations. Therefore, no one has the right to demand from a journalist to t agree on messages and materials, as well as demand to change the text or completely remove the material or message from the press (broadcast).[[17]](#footnote-17) Practice shows that self-censorship is one of the most powerful constraints on journalistic activity. You can hear a lot of opinions on this matter, and they will all be different, sometimes opposite to each other. Officials from journalism, politicians, scientists, media experts and journalists themselves contribute to this issue.

In this case, the problem is seen in the scattering of norms in the various laws of individual media institutions, in the television or print environment, as well as in the lack of liability for violation of these norms. In addition, even the various definitions of censorship that exist in the legislation do not protect the media from the risks that constitute the essence of this social phenomenon.

Censorship should be understood not only as the possibility of direct pressure to hinder the dissemination of information, but also indirect influence on the media in order to correct their substantive work. This should be recognized as interaction in various forms, including illegal nationalization or other transfer of media assets, the imposition of unreasonably high compensations in cases of protection of honor and business reputation, as well as the imposition of seizures on property, the imposition of restrictions on the markets in which they operate. The media, obstruction of the dissemination of information already introduced into civil circulation (to suspend or stop the dissemination of inappropriate information), the use of force against journalists or the expression of threats against them aimed at limiting the performance of their professional duty, raider seizures of the media.

Often, it is the judicial authorities that act as censors for the media. In this case, the procedural opportunity of the plaintiffs to suspend the further dissemination of any information through the court becomes a kind of a club.

Several cases of censorship in relation to domestic media should be considered.

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| *Example: Sverdlovsk District Court of Bishkek B.A.M. considered the statement of claim B.G.Ya. to the newspaper editorial office. Grigory Yakovlevich Bubel (former head of the State Penitentiary Service of the State Penitentiary Service, retired general) appealed to the Sverdlovsk District Court of Bishkek with a statement of claim for the protection of honor and dignity and compensation for moral damage to the newspaper Money and Power (a weekly business newspaper, private) in which he asked to declare the information published in issue 22 (104) of June 8, 2012 under the heading: “BUBELGATE SCANDAL” or “HOW TO MAKE MONEY ON CORPSES AND ALIVE IN KYRGYZSTAN “the story of Maxim Korsakov as untrue and demanded compensation for moral damage in the amount of 50,000,000 (fifty million) soms. On June 14, 2012, the judge of the Sverdlovsk District Court of Bishkek examined the claim of G.Ya. Bubel. to the editorial office of the newspaper “Money and Power” on the protection of honor and dignity, and prohibited to publish the continuation of the full version of the story*  *in order to secure the claims.* |

The court considered that the application to prohibit publication should be satisfied, since failure to take such measures may complicate or make impossible the execution of the court's decision. In this case, the prohibition on further publication was illegal and unreasonable, since any court decision on the merits of the claims presented could not affect the publication of the works, the names of the heroes of which were changed by the author. The further text could not be the subject of any legal disputes, since it was previously published in the press, and was not banned by the decision of any court in connection with a violation of media legislation or other legislation related to the infringement of rights and freedoms of other persons.

In fact, this court decision is a veiled censorship, a distinctive feature of which is the fact that the court did not even get acquainted (did not read) the material that it forbade publication.

Know-how from the judicial system led to the fact that in cases of defamation disputes (protection of honor and dignity), the courts decide to delete disputed information along with its refutation of untrue and defamatory when satisfying claims of the plaintiffs. Most of these claims concern Information Agencies or Internet publications.

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| *Example: On January 24, 2020, The Pervomaisky District Court of Bishkek satisfied a claim for the protection of the honor, dignity and business reputation of a citizen of the Republic of Kazakhstan K.A.A., to K.A.K., ProMedia Plus PF (kaktus. media) and the editor-in-chief; in addition to compensation for moral damage, representation and travel expenses in the total amount of 80,083 (eighty thousand eighty-three) soms, the court also decided to remove the controversial materials.* |

The court does not have a legislative right to make decisions related to the termination or removal of inaccurate information when considering cases of this category. Only after a decision which recognizes particular information as untrue and defamatory has come into force, a plaintiff (if it concerns him) can demand the removal of this information if this information is distributed to other information resources. And there are many such examples in practice.

This vicious practice became possible after the Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic (SC) “On judicial practice in resolving disputes in cases of protection of honor, dignity and business reputation” dated 13.02.2015 was adopted. The Plenary Session of the Supreme Court in its ruling set out paragraph 13 in such a way that the courts themselves cannot understand the interpretation of the norm below and the law enforcement practice is divided. Different decisions are made on similar subjects of claims.

*“In accordance with Article 1 of the Law of the Kyrgyz Republic" On Mass Media ", the Internet does not belong to the mass media.*

*When considering claims regarding the dissemination of information on the Internet, it is necessary to determine the source of dissemination of information and the location of the defendant.*

*When determining the source of dissemination of information, it is necessary to establish whether the information resource contains information, the refutation of which is required by the plaintiff or such information is not posted on the resource, but only displayed on it (using embedded codes, embed technologies, iframe and other similar technologies).*

*If a resource is not a source of false information, but only technically reflects information disseminated by other resources, the court obliges the owner of this resource to stop actions that violate the rights of the plaintiff, but does not oblige him to refute the information.*

*“The court ruling on the termination of actions may contain a requirement to block, restrict and delete the displayed information with the simultaneous posting on this resource of the court decision on the case.”[[18]](#footnote-18)*

The courts violate the constitutional rights of citizens to access information when ordering to remove particular information or stop its distribution in this category of cases. There are no officially banned topics in the Kyrgyz Republic. Only materials recognized by the court and included in the list of extremists cannot be disseminated and must be removed.

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| *In this case, the practice on five claims of the citizen B.E.V. to the Information Agency (IA) "AKIpress", in which, along with the refutation of untrue information and compensation for moral damage, there are also demands to remove all the contested information. It is interesting that the law enforcement practice took completely different paths. In two cases, the courts decided to delete the information, in one case it was denied. All three decisions have come into legal force. At present, the courts are continuing on two claims.*  *In the fourth case, the appellate instance issued a ruling, upholding the decision of the first instance court, according to which the court ordered the information agency "AKIpress" to stop publishing and further disseminating information that the court found untrue and defaming the honor and dignity of the plaintiff.* |

The third example of unjustified interference in the activities of the media is also the decisions of the courts and they are connected with the seizure of the bank accounts of the defendants.

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| *Example: On March 14, 2017, the Leninsky District Court of Bishkek issued a ruling demanding information on the existence of bank, settlement and other accounts belonging to the Azattyk Media institution and the Pro Media Public Fund in banking institutions of the Kyrgyz Republic; and, also on the imposition of an arrest on monetary funds, if any, within the amount of moral compensation claimed from the Azattyk Media institution - 10,000,000 (ten million) soms, from the Pro Media Foundation - 3,000,000 soms, with listing all the leading banks of the country.* |

In its ruling, the court has not taken into account that restrictions on power on disposition, as well as freedom of entrepreneurial and other economic activity, must meet the requirements of justice, reasonableness and proportionality. The seizure of funds in the amount of 10,000,000 and 3,000,000 soms entailed negative consequences for the defendants, since blocked all financial activities of the Azattyk Media institution and the Pro Media PF and made it impossible for them to carry out their functions of informing the public. Thus, according to Article 226 of the Code of Civil Procedure of the Kyrgyz Republic, the court in the ruling, among other things, must indicate the reasons for which the court came to its conclusions and refer to the laws by which the court was guided.

However, the court cited only Articles 140, 141 of the Code of Civil Procedure of KR in its ruling, while the court did not establish the real necessity and proportionality of imposing such an arrest by satisfying plaintiff’s petition, which impeded the financial activities of the Azattyk Media institution and the Pro Media PF. There was no need to secure a claim in the event of a decision in favor of the plaintiff. In defamation lawsuits, a good name is at the forefront, and only then moral damage that may have been caused to the latter.

Moreover, in the aforementioned Resolution of the Plenary Session, the Supreme Court indicated *that in fulfilling a moral social function, the institution of compensation for moral harm sets itself the task of protecting the integrity of the person. When determining the amount of compensation for non-pecuniary damage, the courts should take into account the nature and content of the publication, the degree of dissemination of false information and other noteworthy circumstances, while taking into account the requirements of reasonableness and fairness.*

These recommendations of the court suggest that the court cannot and should not appoint an amount of compensation for non-pecuniary damage that is unbearable for the defendant, whoever he is, a legal entity or an individual.

The list of administrative mechanisms and methods of influencing the media that can be used to manipulate their editorial policy can be very wide, and will inevitably be replenished with new variations.

In view of the above, we believe it is necessary to introduce a separate section into the current law, devoted to the concept of censorship, not being limited to one article. Describe in detail all the possible ways in which the practice has already had cases and those that were voiced above, and which we will discuss below. It is also necessary to prevent possible manifestations of censorship by additionally studying the experience of other countries.

It is necessary to recommend to legislators to establish criminal liability as a separate corpus delicti for censorship in the sense in which it will be defined in the Law of the Kyrgyz Republic on mass media after possible amendments. It should also provide for administrative responsibility for obstructing professional journalistic activities, which should be understood as the commission of actions aimed at hindering the work of journalists that do not constitute a criminal offense, or supplement the Code of Misconduct in the current Article 89 with new offenses, such as for information (coverage of rallies, processions, etc.), and not just for distribution. Thus, expanding the range of subjects of the offense.

Obstruction of the activities of a journalist is understood as a rather narrow disposition of the crime. It is not surprising that in practice the punishment for obstructing the professional activities of journalists does not exist.

It is also recommended not to complicate the qualifying signs of violations of regulatory legal acts (significant material damage, mandatory bodily injury) associated with liability, so that they are not “stillborn”, during elaboration of draft law.

We also believe that it is necessary to introduce an article into the Criminal Code of KR punishing for obstructing the activities of a journalist, combined with violence against him or his relatives, or with damage or destruction of their property (for example, damage to video equipment), as well as with the threat of such violence.

One of the main problems of the entire mass media industry is the decrease in the level of significance of the Law of KR “On Mass Media”. Inactive execution of the law is due to almost complete incapacity and the presence of gaps in its provisions, as well as the adoption of additional legislative acts containing similar norms, and the emergence of new opportunities for the “delivery” of information.

In the Law on Mass Media itself, Article 4, defining the composition of the media legislation, does not define its role in it as a leading one.

As a solution to this issue, the modernization and universalization of the law "On Mass Media" is proposed, the establishment in it of basic principles in the field of information circulation, which have priority in case of conflict with other regulatory legal acts regarding the mass media and the parallel development of other legislative acts, including their harmonization with the main media law. This decision, in our opinion, is more appropriate at the moment and meets the challenges of the development of legislation.

**Registration of mass media**

According to the current law on mass media, the right to establish mass media belongs to individuals and legal entities of the Kyrgyz Republic.

Cannot act as founders:

- a citizen of the Kyrgyz Republic who has not reached the age of eighteen or is serving a sentence in places of deprivation of liberty by a court verdict, or recognized by a court as incapable;

- legal entities whose activities are prohibited by the court in accordance with the law.

State registration (re-registration) and registration of termination of the activities of mass media (hereinafter - registration) are carried out within 10 business days by entering into the state register of mass media information on the creation, re-registration and termination of the activities of mass media.

Mass media registration is carried out in accordance with the Regulations on the procedure for registering mass media in the Kyrgyz Republic. [[19]](#footnote-19) This document was approved after the adoption of amendments to the law related to the establishment and registration of mass media.

Article 6 of the Law on Mass Media states that an unjustified refusal to register a mass media outlet or its delay can be appealed in accordance with the legislation on administrative activities and administrative procedures. Administrative activities are regulated by the Law of the Kyrgyz Republic “On the fundamentals of administrative activities and administrative procedures.” According to Article 6 of this law, administrative bodies are prohibited from establishing and presenting additional formal requirements when carrying out administrative activities that are not provided for by regulatory legal acts or if these requirements do not affect the correct resolution of the administrative case. Here it is important to pay attention to Article 18 of the Registration Regulations. If in the submitted documents during the registration of the media, the deficiencies indicated below are revealed, then the territorial division issues an order to interrupt the period of up to 10 days to eliminate the violations:

1) identification of formal shortcomings in the submitted documents;

2) failure to submit the necessary documents established by this Regulation;

3) absence in the submitted documents of the information provided for by the Registration Regulations.

Important to pay attention to article 20, which restricts registration if it is prohibited by a court act or by an official (investigator, bailiff). It is clear with the court's act: it refers to the rule about founders who cannot be such if they are serving a sentence in places of deprivation of liberty; however, the role of the investigator and bailiff is not clear at all. What document these officials should provide in order to deny registration of the media.

The Articles 23 and 24 of the Regulations require an application for state registration of a media outlet, which must contain certain information and must be accompanied by a copy of the media manager's passport or other document recognized in accordance with the legislation of the Kyrgyz Republic as an identity document. It is not clear whose document is needed, the future editor-in-chief of a media body or the executive director of a legal entity (then it was necessary to indicate so), and why are they needed if there is a founder?

We believe that it is unnecessary, at least at this stage, just as the requirement to indicate funding sources and program goals and objectives. These requirements are formal, they are not part of anyone's functions to check or further recheck them, then why are they needed. They should be excluded from the Regulation.

Providing the applicant with an opportunity to correct deficiencies interrupts the deadline for registration, and the period for correcting deficiencies is not included in the “deadline for registration.” Only if the applicant fails to eliminate the shortcomings in full and on time, an order is issued to refuse registration. The applicant can re-apply to the territorial division after eliminating the reasons that were the basis for refusing registration.

According to Chapter 10 of the Law on Administrative Activities, the applicant and other interested parties have the right to appeal against administrative acts, actions or omissions of an administrative body in order to protect their rights. An administrative complaint against an administrative act may be submitted to the administrative body that adopted the contested administrative act, or to a higher administrative body. A complaint against an action or inaction of an administrative body or official is filed with a higher administrative body or a higher official. In the absence of a superior administrative body or a superior official, the action and inaction of the administrative body shall be appealed against in court.

As practice shows, there are no significant difficulties with the registration of mass media. However, there were cases when a government agency deliberately delayed the established deadlines. Previously, opposition-minded founders of future media faced this.

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| *Example: In February 2010, the Ferghana.Ru website published a letter from the editor-in-chief of the “MK-Kyrgyzstan” newspaper, Babakulov U., in which he reports on the facts of violation by the Ministry of Justice of the Kyrgyz Republic of the deadlines for registering a new media outlet of a Russian edition, in Kyrgyzstan. Primary documents for registration were submitted more than five months ago. During this period, the documents are returned to the applicant four times to eliminate the reasons. According to the applicant, all reasons are “formal” in nature[[20]](#footnote-20).* |

The institution of registration of print media in some countries is absent and is considered unnecessary, since it creates real preconditions for the emergence of administrative arbitrariness on the part of state bodies.

*In this regard, the international organization ARTICLE 19 - World Campaign for Freedom of Expression recommends Kyrgyzstan to abandon the requirement to register print media, referring to the UN Human Rights Committee, which noted: “Effective measures are needed to prevent such control over the media that would impede the exercise of everyone's right to freedom of expression.”[[21]](#footnote-21)*

In practice, registration may be denied without any reference to the law if the name of a media outlet repeats the name of a previously registered media outlet. It is believed that it is done to avoid confusion in the media market.

However, the prohibition on the repetition of names is not absolute, but relative. Thus, if a newspaper with one name is registered in one region, the usage of the same name when establishing a magazine or television program in the same region is allowed. However, the rules protecting trademarks and service marks as intellectual property shall be kept in mind. A considerable number of registered newspapers and magazines have not found their readers and are published either from time to time or not at all. However, they continue to remain in the database of the Ministry of Justice of the Kyrgyz Republic. Like any legal entity, a media body carries out its activities in accordance with the law, regardless of its organizational and legal structure and form of ownership.

We believe that slight adjustment to the Regulations on Registration of Mass Media will make it possible to consider the submitted application of the established form as a notification rather than obtainment of permission, which will have a favorable effect on both the internal and external image of the country. The government of the country will implement the accepted recommendations of international institutions, agreements ratified by the country.

**Editorial office and Regulation**

The authors propose to fill the existing organizational and legal vacuum and introduce such concepts as “editorial office” and the so-called “editorial board” into the Law on Mass Media. At the same time, the charter of the editorial office should be called “internal regulations of the editorial office” (hereinafter the charter or regulation), so that there is no confusion with the charter of the organization (legal entity), possibly, to make functional responsibilities wider than just the release of mass media. To accept the regulation of the editorial board, it is necessary to define the editorial board itself.

So, the editorial office carries out its activities on the basis of professional independence.

The editorial office can also be a legal entity, an independent economic entity, organized in any form permitted by law. If the editorial office of a registered mass media is organized as a legal entity, then it is also subject to registration in accordance with the law on state registration of legal entities and, in addition to the production and release of the mass media, has the right to carry out other activities not prohibited by law in the prescribed manner.

The editorial office is headed by the editor-in-chief, who exercises his powers on the basis of this law, the charter of the editorial office, an agreement between the founder and the editorial board (editor-in-chief). The editor-in-chief represents the editorial board in relations with the founder, publisher, distributor, citizens, associations of citizens, enterprises, institutions, organizations, government agencies, as well as in court. He is responsible for meeting the requirements for the activities of the media by law and other legislative acts.

The editorial office (editor-in-chief) can act as a founder of a mass media, publisher, distributor, owner of the property of the editorial office.

The mass media is by its nature not quite an ordinary organization, and journalists, in turn, are not just employees, but also full-fledged participants in the relationship between the editorial staff of the media and its founder. This is due to many factors: the costs of the profession, issues of authorship and responsibility. The mechanism for adopting the internal regulations of the editorial office is such that one side cannot actually impose on the other the conditions of the media that are unacceptable to it.

The interests of the journalists’ staff and the founder of the media sometimes diverge. Journalists are usually interested in limiting the founder's right to intervene in the editorial office as much as possible, and at the same time, in ensuring reliable guarantees of funding for media activities. For the founder, however, the most attractive option is the charter of the editorial office, according to which it becomes under his control both in the administrative and financial sense. These changes are proposed to differentiate responsibilities between all participants in the media release process.

The modern history of our republic knows many cases when criminal investigations were initiated and persons who were not supposed to bear liability due to their functional duties, or, rather, to say, due to its absence, were brought to justice; when the owner was brought to justice for the release in broadcast of extremist plots.

The internal regulation of the editorial office (hereinafter referred to as the Regulation) of the mass media is adopted at a general meeting of the journalists’ staff - full-time employees of the editorial office, by a majority vote in the presence of at least two-thirds of its composition, and is approved by the founder. We will consider the Russian experience, where, according to the law on mass media of the Russian Federation, the following norms should be defined in the Regulation of the Editorial Board:

*1)mutual rights and obligations of the founder, editorial board, editor-in-chief;*

*2)powers of the team of journalists - staff members of the editorial office;*

*3) the procedure for the appointment (election) of the editor-in-chief, editorial board and (or) other editorial management bodies;*

*4) grounds and procedure for termination and suspension of the activities of the mass media;*

*5) transfer and (or) preservation of the right to the name (title), other legal consequences of changing the founder, changing the composition of the co-founders, terminating the activities of the mass media, liquidating or reorganizing the editorial office, changing its organizational and legal form;*

*6) the procedure for approving and changing the Regulation of the Editorial Board, as well as other norms provided for by the relevant law and other legislative acts.*

*Before the approval of the Regulatio of the editorial office, as well as if the editorial office consists of less than ten people, its relations with the founder, including the issues listed in paragraphs 1-5 of part two of this article, may be determined by the agreement replacing the Regulation between the founder and the editorial office (editor-in-chief).[[22]](#footnote-22)*

The Regulation of the editorial office, organized as a legal entity, may simultaneously be the charter of this legal entity. In this case, the charter of the editorial office must also comply with the legislation on the registration of legal entities.

A copy of the charter of the editorial office or a contract replacing it is sent to the registering authority no later than three months from the date of the first publication (broadcast) of this mass medium. At the same time, the editorial board has the right to stipulate what information contained in its charter or a contract replacing it constitutes limited information.

In this case, the registering authority can be a third party in the event of a conflict of interest.

The current situation around the Osh TV and Mezon-TV shall be considered in support of the fact that the editorial board and their internal regulations should be fixed at the legislative level.

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| *Example: After the events of June 2010 in the south of Kyrgyzstan, the owner of Osh-TV, Kh. Khudaiberdiev, transferred 51% of the company's shares to persons associated with local authorities. Subsequently, he said that he was forced to do so under pressure. In March 2014, by a decision of two instances, all agreements and court decisions, starting from July 2, 2010, were canceled, Kh. Khudaiberdiev was again declared the 100% owner of the TV channel. However, already in political emigration, he was found guilty of extremism in absentia and sentenced to 20 years with confiscation of property. Kh. Khudaiberdiev's appeal to a higher court was not satisfied. In 2014, the Foundation for State Property Management became the founder of Osh-TV, and at present the TV channel is considered a state-owned channel.*  *TV channel Mezon-TV also passed into the ownership of other owners and was renamed “Bashat-TV”after the June 2010 events.* |

The incident with the Osh-TV company is an example of when the owner of the TV channel was prosecuted for broadcasting information that is not subject to public dissemination. This example can also be attributed to the section on the prohibition of censorship, since there is a raider seizure of a television and radio organization, and, possibly, illegal nationalization of a television company. However, to resolve these issues without sufficient will and not only on a declarative basis does not seem possible.

Legislative consolidation of the editorial office and the Regulation should become a guarantee of a clear distribution of functional responsibilities and a specific guideline for bringing to justice the appropriate subject and, accordingly, its degree, both for law enforcement agencies and for the judiciary, if the former make the wrong decision, in good faith being mistaken or abusing their official powers. Legal regulation will make it possible to change law enforcement practice and will not only give direction in the correct decision-making, it will oblige state bodies to follow them.

Perhaps our journalism will be characterized by a formal attitude to the content and procedure for adopting the Regulation. And this may be due to the weak capabilities of labor collectives and the lack of trade unions that would defend their rights, which, in turn, is caused by the difficult economic situation of the majority of journalists, as well as the founders' neglect of the requirements of media legislation.

The regulation limits the possibility, at least legally, of the founders or owners to interfere with editorial activities. It is a guarantee that freedom of the media is not replaced by the freedom of media owners. It must be understood that the reverse situation is flawed, unconstitutional and undemocratic. Of course, one could argue that journalists also sometimes arrogate to themselves the right to dispose of freedom of the media in their own interests. However, here it is necessary at least to take into account that there are hundreds of times more journalists than founders, they are representatives of various strata of the population, socially oriented and it is more difficult to blame them for being isolated from the daily needs of the population.

We could not help but pay attention to the professional independence of the journalist in their editorial office. It, as a rule, is determined by the right to distribute materials prepared by him under his own signature or under a pseudonym, to refuse to prepare and publish material if it contradicts the convictions of the journalist; the right to express his personal opinions and assessments in messages and materials intended for distribution under his signature, and the right to remove his signature from the material or the material itself, the content of which, in the author's opinion, was distorted in the course of editorial preparation.

There are media outlets that do not indicate the authors of publications at all, and this, at least, may violate their right to a name.

**Suspension and termination of media activities**

The provision of Article 8 is partially considered in favor of the medi; it states that the suspension or termination of the activities of the media is possible by decision of the founder or the court in case of violation of the law.

The existence of such a rule protects the media and does not allow the representatives of state authorities to close the “dissenting” media by their order. Although the practice in this area is not so great, nevertheless, it is necessary to protect the media from the arbitrariness of both state bodies and from the illegal actions of the founder, who also has the right to close the media. In theory, even the slightest violation of the Media Law can lead to the closure of a media outlet. This would be a disproportionate measure and would constitute a serious violation of the right to freedom of expression. Consequently, this article requires some clarifications, namely, to indicate specific, comprehensive grounds on which the founder or the court can close or suspend the activities of the media. And there should be as few as possible of such grounds.

There have been no cases of closure of media outlets or suspension of their activities on the basis of violation of the norms of the current law in recent history, which, of course, does no honor to our law enforcement officers as there were other opportunities to stop their activities. For example, the September TV and Radio Company and the April TV company ceased their activities without violating any of the norms of the analyzed Law. However, it seems to us that it will not be superfluous to consolidate the position of the media in legislation. Sooner or later, the law enforcement practice will follow the legal path, then all the amendments will come in handy.

Suspension of activities is the most severe punishment that can be applied to a media outlet, with the exception of complete closure. For news media (published daily), the time factor plays an important role. Even the minimum period of suspension of their activities will seriously affect the further activities and image of the media. The suspension of the activities of the media in the modern information society is, in fact, tantamount to the termination of its work. Therefore, the grounds on which activities can be suspended should be strictly limited or absent altogether.

In addition, the absence in the main sectoral law of general rules and principles for the termination of media activities is used to justify the appearance of disproportionately harsh media termination procedures in certain sectoral laws (for example, as cited in the law on countering extremism).

The procedure for recognizing information materials as extremist is carried out in the order of special proceedings for certain categories of cases provided for in Chapter 25-1 of the Civil Procedure Code of the Kyrgyz Republic (hereinafter CPC KR) “Proceedings on applications for recognition of extremist or terrorist information materials that call for the implementation of such activities or substantiate or justify the need for its implementation.”

The basis for starting a special proceeding is a statement by the prosecutor on the recognition of the materials as extremist. Proceedings in such cases are within the jurisdiction of the courts of first instance (district courts, district courts in the city, city courts).

In accordance with article 261-1 of the CPC KR an application for the recognition of materials must be considered by the court in a short time:

- three days from the date of receipt of the application;

- if additional verification is required, the period may be extended up to five days.

The accelerated terms of consideration of such categories of cases are justified by the protection of state and public interests, namely, the protection of the state and society from manifestations of extremist activity.

The courts have the right to take measures to restrict access to information material even before a decision is made on the merits of the application, if such a request is made by the prosecutor (this application will be resolved within the framework of Chapter 14 of the CPC KR “Securing a Claim”).

It is assumed that the expedited procedure for considering an application with the subsequent possibility to restrict access to controversial material allows the state to quickly respond to the appearance of “extremist” content on the Internet segment. However, given the technical features, the courts, when restricting access to materials posted on the Internet resources, should take measures not to restrict the placement of other information materials on the affected Internet resource.

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| *Example: The Oktyabr District Court of Bishkek recognized one of the information materials on the Ferghana.ru website as extremist by its decision on June 8, 2017. But along with the recognition of the material as extremist, the court restricted access to the entire information resource www.fergananews.com, although the provisions of the Law of the Kyrgyz Republic "On Countering Extremist Activity" and the CPC KR provide for restricting access to specific information material. Blocking an entire network resource can be justified only if all of its content is aimed at disseminating illegal extremist information (for example, sites that distribute videos of banned extremist or terrorist organizations, etc.). The adoption of such a decision must be appropriately motivated in the court decision.* |

The procedural legislation indicates that decisions “on recognizing as extremist information materials that call for the implementation of such activities or substantiate or justify the need for such activities” enter into legal force immediately after their proclamation.

The court decision can be appealed on cassation within three months from the date of the judicial act (Article 261.3 of the CPC KR). A copy of the court decision that entered into legal force in accordance with Article 13 of the Law of the Kyrgyz Republic "On Counteracting Extremist Activity" should be sent to the Ministry of Justice of the Kyrgyz Republic, which is entrusted to register information materials recognized by the court as extremist.

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| *Example: The Pervomay District Court of Bishkek declared extremist information materials ( an interview with citizen A. Kaparov allegedly inciting ethnic hatred), which were broadcast live on the September TV channel in 2015, and banned broadcasting in digital and analogue packages, and also restricted access to September TV programs for Internet users on August 22, 2017 on the claim of the General Prosecutor's Office of the Kyrgyz Republic against the September TV and Radio Company. This trial was accompanied by gross violations of the law. Thus, the procedural norms of Chapter 25-1 "Proceedings on applications for recognition of information materials as extremist or terrorist ..." do not provide for a complete prohibition of the organization's activities. Therefore, the court was not entitled to consider restricting the broadcasting of the full program schedule of the September TV and radio company, since the subject of the court proceedings was only an interview with A. Kaparov. Moreover, the Prosecutor did not file such claims.*  *Thus, the prosecutor’s office had to file a new statement of claim in a general manner with presentation of all evidence for investigation in the trial if it wished to demand prohibition of full broadcasting.*  *MPI filed a cassation appeal against this decision to the Supreme Court of the Kyrgyz Republic*[*https://www.facebook.com/media.kg/photos/pcb.557710574566483/557709851233222/?type=3&theater*](https://www.facebook.com/media.kg/photos/pcb.557710574566483/557709851233222/?type=3&theater)*. The session in Supreme Court of KR took place on December 25, 2017, and already on December 27, the collegium terminated the proceedings on the case, without starting the trial, on the merits. The decision of the first instance court was upheld. Thus, the Supreme Court of the Kyrgyz Republic grossly violated the constitutional right to judicial protection of the company's legitimate interests. On May 25, 2018, MPI applied to the Supreme Court of KR with a request to restore the procedural time frame for filing a cassation appeal with the Supreme Court. However, on July 12, 2018, the Supreme Court of KR refused the September TV channel to restore the missed deadline for filing a cassation appeal and refused to consider it.*  *MPI, on behalf of the September TV and Radio Company, prepared a complaint to the UN Human Rights Committee. The process of collecting documents on the complaint at the final stage.* |

Article 9 of the law on mass media allows mass media to restore their violated rights by appealing against the decision to suspend or terminate its activities in court. The grounds and procedures for the termination of media activities must be spelled out in the Law of the Kyrgyz Republic "On the Mass Media" and include the following components:

1. The founder has the right to terminate or suspend the activities of the mass media only in cases and in the manner provided for by the internal regulations of the editorial office, or by an agreement between the founder and the editorial office (editor-in-chief).

2. The grounds for the termination of the activities of a mass media by a court must be repeated, within one year, violations of the requirements of Article 23 of this Law by the editorial office, about which the authorized body (in our case, it is the Information Department under the Ministry of Culture, Information and Tourism) sent written warnings to the founder or editorial office (to the editor-in-chief), as well as failure to comply with a previously adopted court order to suspend the activities of the media, if such a provision remains in the law.

The warning must be a non-normative act of the authorized body, which is issued in order to prevent violations of the legislation on the mass media and indicate their inadmissibility.

3. Identify one single body with the mandate to carry out regulatory functions in the industry. The control procedures should detail the grounds for applying liability. Only the supervisory authority has the right to initiate the termination of the activities of the media. Any regulatory action that affects media freedom can be challenged in court.

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| *In this vein, it is important to recall another egregious example with the closure of the April TV company, in respect of which the Interdistrict Court of Bishkek satisfied a statement of claim to invalidate the decision (protocol) of Digital Technologies LLC dated November 21, 2019, in part permission to broadcast the channel of April TV LLC, as well as a maintenance agreement between April TV LLC and Digital Technologies LLC (DT). It is worth explaining that DT LLC is a TV and radio broadcasting operator of a private multiplex.*  *As such, by the minutes of the general meeting of DT LLC dated November 21, 2019, a decision was made to connect LLC "April TV" to broadcasting.*  *The investigative group of the Military Prosecutor's Office of the Kyrgyz Republic is investigating a number of criminal cases on corruption cases of the former President of the Kyrgyz Republic A.Sh. Atambayev, who is one of the founders of April TV LLC, which he acquired with money obtained by criminal means, as follows from the statement of claim. At the request of the investigating authority, by a resolution of the Pervomaisky District Court of Bishkek on October 22, 2019, the authorized capital of April TV LLC was seized. By the same court decision, the owner, owner and user are prohibited from disposing and using the shares of April TV LLC.*  *Taking advantage of the above opportunities, the Military Prosecutor's Office of the Kyrgyz Republic asked the court to prohibit the broadcast of the TV channel. The defendant, appealing, indicated that the statement of claim should be left without consideration, since the Military Prosecutor's Office of the Kyrgyz Republic does not have procedural powers to present claims against LLC "Central Television" and LLC "April TV" and is an inappropriate party for a number of reasons. At the time of writing the analysis, there was no court decision on this appeal.ой апелляции на момент написания анализа судебного решения еще не было.* |

The fact that during the analyzed period no attempts were made to close the media outlets (if there were any, we are not aware of them) in the manner prescribed by the Law on Mass Media cannot be considered as sufficient reason to believe that such actions will not be taken in the future. This threat is seen as more than relevant in the context of the existence of initiatives to expand the list and not only the laws that are already familiar to us, but other innovations related to bans on the dissemination of information by the media.

One of these threats was not long to come, and already during the global Covid 19 pandemic, a bill was initiated with the requirement of early consideration.

On March 31, 2020, the State Committee for National Security of the Kyrgyz Republic submitted for public discussion a single package of bills, the draft Law of the Kyrgyz Republic “On Amendments to the Civil Procedure Code of the Kyrgyz Republic” and the draft Law of the Kyrgyz Republic “On Countering Terrorism”.

Part 1 of Article 13 of the draft law of the Kyrgyz Republic “On Countering Terrorism” stipulates that media workers, when covering events related to acts of terrorism and anti-terrorist activities, must take into account that the right of people to life and security is primary in relation to the right to freedom of access to information and its distribution. We believe that the bill should spell out specific norms of behavior in society, and everyone should know the content of their rights and obligations, so that journalists can foresee the potential consequences of their actions under this law.

From the proposed norm, the editorial staff of the media and journalists are deprived of a clear and unequivocal understanding: in which cases the restriction of their right to freedom of expression is appropriate and proportionate, and in which it is excessive interference. This wording does not contain specific rules for the subjects of the legal relationship.

As noted, any restriction must be justified in accordance with the criteria of legality, necessity, proportionality and non-discrimination. Part 3 of Article 13 of the above draft law does not meet these criteria. This rule establishes the obligation for journalists to provide information that can be evidence in a terrorism case. It is not clear from this wording and the attached statement of justification what is the validity and proportionality of such restrictions.

The draft law also proposes to amend Article 261-1 of the CPC KR,[[23]](#footnote-23) stating it in the following wording: “The prosecutor, within the limits of his competence, upon the submission of state bodies countering terrorism and extremism, has the right to apply to the court for recognition as extremist or terrorist organizations, as well as information materials that call for the implementation of such activities or substantiate or justify the need for its implementation, in compliance with the rules on jurisdiction established by Chapter 4 of this Code.” That is, in an expedited manner, within three to five days, it is proposed not only to block any information but to prohibit activities of the organization as a whole.

The statement of justification notes that the proposed draft does not contradict the norms of the current legislation. However, this is not at all the case. The norm on the procedure for recognizing materials as extremist additionally includes organizations, including the media, the rights and legitimate interests of which will be directly affected.

Closing media outlets is an excessive form of responsibility. Forcible termination (suspension) of media activities, albeit by a court decision, is an unacceptable procedure in a democratic society. To the extent that restrictions on freedom of the media are legal and necessary, they should be found in legislation of general application, for example, in the civil or criminal code. Journalists, the editor-in-chief, the owner of the media can and do bear some responsibility for violations of the law, but this responsibility must be fair and proportionate to the offense.

It is worth noting that this government initiative was never registered in the Jogorku Kenesh for consideration by the deputies of the sixth convocation. It seems that the above reasonable arguments about the anti-constitutionality of the measures proposed in the government, expressed by civil society organizations[[24]](#footnote-24), had an effect, and the government has so far refused to initiate the project.

**Inadmissibility of abuse of freedom of the media**

The list of information not subject to public dissemination is contained in Article 23 of the Law of the Kyrgyz Republic “On the Mass Media”. In accordance with it, the media is not allowed:

*a. disclosure of state and commercial secrets;*

*b. a call for the violent overthrow or change of the existing constitutional order, violation of the sovereignty and territorial integrity of the Republic of Kyrgyzstan and any other state;*

*c. propaganda of war, violence and cruelty, national, religious exclusivity and intolerance towards other peoples and nations;*

*d.insult to the civil honor of peoples;*

*e. insulting the religious feelings of believers and worshipers;*

*f. propaganda of narcotic drugs, psychotropic substances, organ and (or) tissiue sale, pornographic materials, printed publications, images or other objects of a pornographic nature; information aimed at involving potential victims in human trafficking, services of a sexual nature, including under the guise of psychological assistance, communication, relaxation, massage, pleasant pastime under the guise of legal activities, acquaintance with the aim of further engaging in sexual relations;*

*g. using expressions that are considered obscene;*

*h. distribution of materials that violate the norms of civil and national ethics, insulting the attributes of state symbols (coat of arms, flag, anthem);*

*i. encroachment on the honor and dignity of a person;*

*j. knowingly disclosing false information.*

This article of the law has been unchanged, like most others since its adoption. In May 2014, bullet “f” - the distribution of pornography was significantly expanded.

Analyzing this article, it is important to note that some provisions of the list of prohibitions raise questions regarding their functionality in law enforcement practice. In particular, propaganda of war, violence and cruelty, national, religious exclusivity and intolerance towards other peoples and nations are indeed extremely socially dangerous acts, they are criminalized by the Criminal Code.

To overcome this problem, it is necessary to bring the point “c” of Article 23 of the Law of the Kyrgyz Republic “On Mass Media” into line with the provisions of Article 313 of the Criminal Code of the Kyrgyz Republic. A similar adjustment should be made in relation to a number of other provisions of Article 23: paragraph “b” must be brought in line with the provisions of Article 310 of the Criminal Code, paragraph “h” - with the provisions of Article 175 of the Code of the Kyrgyz Republic on Misconduct.

Media experts Alisheva N.I., Golovanov D.A. and Usenova B.D. in their study "Development of media law in the Kyrgyz Republic", having analyzed this article of the domestic law, in our opinion, gave exhaustive recommendations for both legislators and for law enforcement professionals.

In particular, they noted that*: “With regard to the requirements for the content of the media, it should be noted that the protection of values such as“ norms of civil and national ethics” is not provided for by criminal legislation. Moreover, it is highly doubtful that such regulation is possible in principle, since ethical relations belong to the category of moral, not legal norms, and should be outside the legal framework.*

*The application of measures of responsibility to the media on the grounds indicated above may be possible only after the acts are recognized as criminal in the criminal procedure, as well as subject to an analysis to determine whether the communication of this or that information was dictated by the requirements of protecting the public interest or other reasons.*

*With regard to the rest of the provisions of Article 23 of the Law of the Kyrgyz Republic "On the Mass Media", according to the authors of the study, a radical revision is required. Some of the provisions should be retained in the law, but they cannot serve as a basis for suspension, let alone termination of media activities. Otherwise it would mean a departure from the principle of proportionality of the sanction of the danger of violation.*

*Thus, an infringement on the honor and dignity of a person, of course, should be considered as improper fulfillment of duties by representatives of the media, but cannot be recognized as a basis for applying public legal responsibility to the media. The restoration of violated rights should take place using the institutions of private law, namely, the provisions of the Civil Code of the Kyrgyz Republic on defamation.*

*A similar approach seems to be justified in relation to the use of obscene expressions. Without a doubt, the use of profanity cannot be recognized as permissible in the media, but the sanction in the form of termination of activity cannot have the right to exist. For comparison, the use of such vocabulary by a citizen in a public place is considered an administrative offense (and not a criminal offense) and can be punished with administrative arrest for a maximum of 3 days.*

*The commission of a violation by media workers in the course of their professional activities should be considered as an aggravating circumstance, or rather, form a qualified corpus delicti. It is logical to assume that the amount of the fine in this case should be substantial. At the same time, the establishment of stricter rules on liability for swear words, such as, for example, the elimination of the media disseminating such words, seems unacceptable.*

*The remaining provisions of Article 23 cannot be considered as meeting the requirements of certainty, proportionality and necessity, and in addition, they can be recognized as contrary to the Constitution of the Kyrgyz Republic. In particular, such a basis of responsibility as “disclosure of deliberately false information” is extremely broad and, in this formulation, means almost unlimited possibilities for stopping the work of the media. Obviously, the mass media disseminate a huge amount of information, which may not always be verified. Actions are also possible to deliberately mislead journalists in order to disseminate incorrect information. The main problem is that the formal termination of work can follow absolutely any inaccuracy in the dissemination of information, since the law does not describe the requirements for the severity of the act and the impact that the actions of the media when indicating incorrect information can have on society.*

*Concepts such as insulting the “civil honor of peoples”, “religious feelings of believers and worshipers” should not be present in the legislation, as they refer to values ​​that do not have formal expression and consolidation. It is impossible to give a clear concept or at least exhaustive examples of what is the honor of peoples or the feelings of believers, to explain what the difference is between the feelings of believers and non-believers, without violating the constitutional principle of non-discrimination on the basis of religious affiliation. The question can also be raised that the protection of an indefinite object of “feelings of believers” by the state means a violation of the principle of the secular nature of the Kyrgyz Republic, which forms the basis of the constitutional order and declared in part 1 of Article 1 of the Basic Law “.[[25]](#footnote-25)*

The outlined recommendations and the above study of our colleagues in general became possible thanks to the project “Independence and pluralism of the media” implemented by the Public Fund “Media Policy Institute” in 2015, the authors of this analysis could not help but use the available material, which is relevant and in demand until now, and recommendations for the most part reflect the position we adhere to.

**Access to the information. Rights and obligations**

The obligation to comprehensively verify the disseminated information, in turn, lies at the heart of socially responsible journalism, the rights of which are protected by the legislation on the media.

Some amendments to the law on mass media that took place in 2017 provided that “mass media bodies have the right to search, receive, produce and disseminate mass information”, and also provided for the procedure for providing information, which is under the jurisdiction of state bodies, public associations and officials, indicating that these relations are governed by legislation on access to information. (Article 15 of the Law “On Mass Media”).

The adoption on December 28, 2006 of the Law of the Kyrgyz Republic “On access to information held by state bodies and local self-government bodies of the Kyrgyz Republic” was a great breakthrough and a help to the above “profile” legislation. This law can be described as an exclusively procedural law. The procedural aspect of citizens' access to information, prescribed in the law, is very important, it was the prescribed regulations that allowed citizens to gain access to information in quite specific ways. There are five such procedures in the law. First of all, these are:

*1) publication and dissemination of relevant information on the activities of state bodies and local governments, 2) publication of official information, 3) provision of direct access to documents and materials, 4) provision of direct access to open meetings, 5) as well as provision of information to individuals and legal entities on the basis of their written and oral request.*

This legislative act for the first time established a time frame for preparing a response to a request. But this only applies to government information. The law on access to information, by setting specific deadlines, essentially equalized individuals, legal entities and the media. This norm deserves attention, but it did not help journalists. The right to promptly receive information and deliver it to the consumer, including the media, is the most important factor in its implementation. Society should be able to receive meaningful, timely and balanced information as soon as possible, which they would receive from the media.

It is necessary to make additions to the Law on Mass Media, prescribing specific terms for the response of state bodies and local self-government bodies to a journalist's request, which cannot exceed 5 days. If the request concerns the protection of the rights and freedoms of a citizen, the state of the environment, accidents, disasters, dangerous natural phenomena or other emergencies that have occurred or may occur and threaten the safety of citizens and the state, the period for preparing a response is set **up to 2 days**. The above cases can be extended.

With regard to access to information held by organizations with a private form of ownership, it is necessary to stipulate in a separate clause that enterprises, institutions and organizations and their officials are obliged to provide the media with the opportunity to familiarize themselves with information of public interest, affecting the rights and freedoms and legitimate interests of citizens. For this category of information owners, regardless of legal entities or individual entrepreneurs, or joint stock companies with a mixed form of ownership, set a period **of 10 days**.

Refusal to provide information may follow in cases where information is limited in access. It should be noted that the criteria and procedures for assigning information to the category of restricted access are not spelled out in great detail. It is necessary that for every action or inaction of officials who violate the terms for the provision of information or in the event of an unjustified refusal to provide it, responsibility, disciplinary or administrative, must be established. In exceptional cases, criminal liability may also arise.

At the same time, it is necessary to clearly spell out the concept of socially significant information in the Law, or specify a list of such information. Most likely, it should be wider than the cases described above, related to the prompt response to requests from the media and journalists. For example, such information could be the state of health or sanitation.

When determining the list of socially significant information, we decided to go from the opposite, having analyzed the legal norms of information of limited access.

Thus, one of the main types of restrictions on access to information are state secrets, which are regulated by the Law of the Kyrgyz Republic “*On the Protection of State Secrets of the Kyrgyz Republic*” dated April 14, 1994.

State secrets of the Kyrgyz Republic are divided into three categories: *state secrets, military secrets, and official secrets*.

State secrets are understood as information stored and moved by any kind of media, affecting the defense capability, security, economic and political interests of the Kyrgyz Republic. A very wide range of information concerning practically all spheres of public and state life can be classified as state secrets.

However, when deciding whether to classify certain information as state secrets, officials vested with such a right should take into account that certain information cannot be a state secret. This information:

*1) on natural disasters and emergencies that threaten the safety and health of citizens; 2) on disasters and their consequences; 3) on the state of affairs in the environment, the use of natural resources, health care, sanitation, culture, agriculture, education, trade and law enforcement ; 4) on the facts of violation of the law by state bodies, local self-government bodies and organizations, their officials; 5) facts that infringe on the rights and legitimate interests of citizens, as well as create a threat to their personal safety. (Article 11)*

We propose that this list of information, which is not subject to classification, be legally classified as socially significant information and recommend that lawmakers take it as a guideline, expanding it if possible. This experience can be applied by analogy with the Law of the Kyrgyz Republic “On Counteracting Extremist Activity” in article 1 of which, in the conceptual apparatus, the definition of extremist activity is given by a list of 5 items and 9 sub-items.

*The Supreme Court of the Russian Federation in the resolution of the plenum “On the practice of the application of the Law of the Russian Federation “On the Mass Media” by the courts” indicated that the public interest should include not any interest shown by the audience, but, for example, the need of society to detect and disclose threats to a democratic rule-of-law state and civil society, public safety, environment. However, it did not confine itself to such an obvious example, but went much further.*

*The ruling of the Supreme Court of the Russian Federation says that in proceedings concerning the disclosure of information about the personal life of citizens, the courts need to draw a “distinction between reporting facts (even very controversial) that can have a positive impact on the discussion in society of issues concerning, for example, the performance of their functions by officials and public figures, and reporting details of the private life of a person who is not engaged in any public activity. While in the first case, the media perform a public duty in informing citizens on issues of public interest, in the second case they do not play such a role.”[[26]](#footnote-26)*

The authors of this analysis provide examples and references to the legislation of the Russian Federation and the law enforcement practice of the courts of the Russian Federation, which existed until 2011. Leading experts in the field of media law of the Russian Federation and others note that all the norms adopted by the legislator and commented on by the law enforcement officer before this period were as progressive, correct and balanced as possible.

In addition to the problems that were described above with the right of a journalist to access information, it should be noted that some legal aspects of the work of media workers are not protected by law at all.

Thus, for example, none of the legal acts establishing the legal status of a journalist authorize the right to conduct covert filming or audio recording. The Mass Media Law permits audio and video recording only with the consent of the citizen (Article 20); The Law of the Kyrgyz Republic “On the Protection of the Professional Activities of Journalists” in Article 7 prohibits the use of audio and video recording devices without the consent of the information source or the author.

Of course, the relationship of a media representative with his respondents should be built precisely on the basis of an open and transparent dialogue, obtaining prior consent for audio or video filming. However, in order to disclose socially significant problems and draw attention to them, including in the process of conducting a journalistic investigation, the press, no doubt, must have the ability to use covert audiovisual technology.

Examples of cases that require the use of such devices include anti-corruption reports in which journalists illustrate acts of domestic extortion, corruption investigations, or telling about places where drugs are illegally distributed. Open video or photography in the above cases can nullify the entire work of a journalist.

In this context, the Russian experience is again interesting. Article 50 of the Law of the Russian Federation “On Mass Media” establishes a limited list of cases in which covert recording is possible.

*The first case - if it does not violate the constitutional rights and freedoms of man and citizen.*

*The second case - if it is necessary to protect public interests and measures are taken against the possible identification of unauthorized persons.*

*The third case - if it is covert recording is carried out by a court decision.*

It is clear, covert recording is rather an exception, not a rule for a journalist, but authors believe that adaptation of the first two cases described above to our legislation will be great blessing to domestic journalism.

Article 49 of the RF Law on Mass Media is to some extent correlated with Article 50, w*here the duties of a journalist include, among other things:*

*- to obtain consent (except for cases when it is necessary to protect public interests) for the dissemination in the mass media of information about the personal life of a citizen from the citizen himself or his legal representatives;*

*- when receiving information from citizens and officials, inform them about audio and video recording, filming and photography.*

Despite the requirement of the law on mass media to obtain consent for the dissemination of information about a citizen's personal life from himself or his legal representatives, the law does not prohibit, for example, the collection or storage of such information. This possibility was most likely left in order to allow for a covert recording.

*A covert recording is usually understood as a tacit (invisible, non-obvious) fixation by technical means of action (inaction) of a person who is not aware of its implementation and whose consent has not been obtained.[[27]](#footnote-27)*

As practice has shown, law enforcement agencies do not bother at all about the qualifications of certain actions of journalists.

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| *Example: The operator of the Azattyk Media Aibek Kulchumanov was attacked by unknown persons at 8 AM on September 28, 2019, while filming with a small aircraft (drone). At about 7 AM the journalist was filming the city on the Lenin street for journalists investigation related to RM. Aibek Kulchumanov's statement in the Unified Register of Misdemeanors and Crimes was registered under article 210 of the Criminal Code of the Kyrgyz Republic “Robbery”.*  *In turn, the statement against the operator Azattyk Media was registered under Article 186 of the Criminal Code of the Kyrgyz Republic “Violation of privacy”. To date, law enforcement officials have not provided official information about the applicant and what relation he has to the private territory where the drone was allegedly found (it is obvious that only the owner of this house or his family members directly living in this house can act as victims).*  *In addition, the airspace over a certain terrain cannot be an object of private life, only the Kyrgyz Republic has full and exclusive sovereignty over the airspace.*  *The norm of the Article 186 of the Criminal Code of KR provides for liability for “illegal collection, storage, use and dissemination of confidential information about a person's private life without his consent, except in cases established by law.” In this connection, the investigation had to establish whether it was illegal to collect information by the cameraman as part of a journalistic investigation.* |

According to the Law of the Kyrgyz Republic “On the Protection of the Professional Activity of a Journalist”, the state guarantees the journalist free receipt and dissemination of information, and ensures his protection in the exercise of his professional activity. The law stipulates that materials and documents obtained in the course of a journalistic investigation cannot be seized or subjected to inspection from a journalist.

**Media relations with others**

In accordance with the Article 18, the media body is given the right not to disclose the name of the person who provided the journalist with information, unless required by the court. It should be noted that this is one of the paragraphs of the article that works in favor of the journalist, but the rest can significantly harm the activities of the media and directly to the journalist. More about it will be covered below.

So, the first clause of the Article 18 provides for issues related to the dissemination of information submitted to a journalist by a citizen on conditions of confidentiality, protection of journalistic sources of information, etc. The institution for the protection of information sources is based on the constitutional right to privacy of correspondence, telephone conversations, postal, telegraph and other messages. An exception is made in cases where the request to disclose the source of information came from a court.

This provision not only provides protection to the citizen who provided information to a journalist, but also indirectly provides protection to editorial offices and journalists from being forced to disclose the source of information. The protection of journalists' sources of information is as important a guarantee of freedom of the media as are the prohibition of censorship, the presumption of professional independence of journalism and non-interference in its activities by the state and other persons.

However, already the next clause of the Article 18th prohibits the media body “to make public any information concerning a juvenile offender without the consent of his legal representative.” The restriction on the publication of "any" information is a matter of concern. Consequently, even a simple mention of the fact of an offense is prohibited. The legislator illogically mentions only the juvenile offender and is silent about the juvenile's identity as a victim.

One more point of the mentioned article imposes a ban. The media body is prohibited from “disclosing the data of the inquiry, preliminary and judicial investigation without the written permission of the inquiry body, investigator, prosecutor and court.” Based on this rule, it follows that for any material regarding coverage of topics related to the preliminary investigation and legal proceedings, it is necessary to ask for written permission.

Media lawyers and advocates believe that this provision is censorship for the journalistic community. And the journalists themselves claim that it is practically impossible to get permission from the above-mentioned authorities. Any answer is delayed for a long time and the relevance of the question is lost. Due to the specifics of their work, journalists do not apply for permission, but find faster ways to obtain documents and information.

At first glance, a harmless article, upon closer scrutiny, reveals specific obstacles in the dissemination of socially significant information. It should be noted that the text of the article contains the word “data” of the inquiry …”. The use of an “incomprehensible” word is not permissible in the law, since it does not reveal the essence, and vague formulations do not make it possible to act clearly within the framework of this law. The legislator himself in a specific situation does not determine what should be attributed to the word “data”, therefore, officials of the bodies of inquiry, preliminary and judicial investigation will “decide” for him. This means that if there is no clear list of documents or information in the legislation, then there is a danger on the part of officials to abuse their power.

Chapter 7 of the Criminal Procedure Code of the Kyrgyz Republic indicates a certain category of persons involved in the production of investigative actions, from whom, in accordance with the established procedure, a non-disclosure agreement may be taken. These are witnesses, experts and specialists, a translator, as well as some other participants.

There is a list of persons who are not included in this circle, but also have all the necessary information. For example, these are accused or suspects who are not covered by the norm of the article of the criminal law on non-disclosure of investigation data. And in a situation where a restriction is imposed on the dissemination of some information by an investigator, a prosecutor or a court, then any participant in these actions (and for a journalist he is a source of information) must himself determine to what extent to provide the journalist with this or that information.

Considering that the journalist has other sources of information that are not burdened with the obligation to divulge secrets, it becomes unnecessary to send written requests to the authorities specified in the Article 18.

These are just the main reasons why it is necessary to exclude this clause from the law.

**Media liability and cases of exemption**

The defendants in claims for the refutation of information discrediting honor and dignity or business reputation are the persons who disseminated them.

In accordance with the requirements of Article 60 of the Code of Civil Procedure of the Kyrgyz Republic, the plaintiff is obliged to prove the fact of dissemination of discrediting information by the person against whom the claim is brought, and the defendant is obliged to prove the compliance of the disseminated information with reality.

If the claim contains a requirement to refute information in the media, the author, the relevant media outlet (editorial office), the person who provided the information material are involved as defendants.

When publishing or otherwise distributing such information without indicating the name of the author (for example, in an editorial article), the defendant in the case is the mass media itself (editorial office).

According to the Article 25 of the Law of the Kyrgyz Republic “On the Mass Media” , the founder of the mass media represented by the head, the media body represented by the editor and the person who provided the information material can be brought to justice for violation of the law.

The documents of title of the mass media are subject to verification, as well as the issues of registration of mass media (Law of the Kyrgyz Republic “On Mass Media”, Regulation “On the Procedure for Registration of Mass Media in the Republic of Kyrgyzstan” No. 410) to determine the proper defendant.

The law on the mass media is not ideal. Inaccuracies and contradictions are encountered in the text. And some issues of the media are not covered at all. However, there are also positive aspects in it, which all these years have contributed to the relatively normal activities of the media.

For example, the law defined cases when a media body is not responsible for the dissemination of information in the media that does not correspond to reality (Article 26). The article is called “Cases of exemption from liability for the dissemination of information that does not correspond to reality.” This article defines four positions that protect the media and journalists in their daily work. These are the cases:

а) if this information was contained in official documents and messages;

official documents and messages are understood as any documents and messages that, in the manner prescribed by law, come from state authorities and self-government bodies.

public speaking means a message to the public that is read out directly or with the help of technical means in a place open for free visits, where there are a significant number of people who do not belong to the usual family circle, in an environment indicating that the message was perceived by the public (Law of the Kyrgyz Republic “On the official interpretation of terms”, the Law of the Kyrgyz Republic “On the mass media”).

For example, official documents should include the speeches of an official at a pre-scheduled meeting held with the participation of journalists in a specially designated room in the building of the relevant body, organization and in accordance with the approved agenda.[[28]](#footnote-28)

If the court finds that the official was not authorized to make an official speech and expressed only his own point of view (provided that the editorial office of the media outlet, editor, journalist knew about it), then the editorial office of the media outlet, editor, journalist is not exempt from liability.

It should be borne in mind that the dissemination of speeches and official documents by the media, the obligation of which is established by the Law of the Kyrgyz Republic “On the procedure for covering the activities of the Jogorku Kenesh of the Kyrgyz Republic in state media” dated June 13, 2007 No. 86, implies that such messages and documents are of an official nature;

b) if they are received from information agencies or press services of state and public bodies.

In this case, one should also bear in mind the information contained in the responses received upon request, or contained in the materials of the press services of not only state bodies, but also local self-government bodies;

c) if they are literal reproduction of public speeches

Literal reproduction of public speeches (and their fragments) presupposes such citation that does not change the meaning of statements, messages, materials, their fragments and the author's words are transmitted without distortion.

It should be noted that during literal reproduction in the press and other media, an editing process occurs, during which oral statements can undergo literary processing to simplify speech perception. Such quotation may differ slightly from the original statement while maintaining the content of the statement.[[29]](#footnote-29)

At the same time, in a number of cases, exactly cited fragments of speeches, messages, materials may have a meaning directly opposite to that which was conveyed to them in a speech, message, material..

If during the reproduction of speeches, messages, materials and their fragments in the media, any changes and comments were made to them that distort the meaning of the statements, then the editorial office of the media, editor, journalist cannot be exempted from liability;

d) if they were contained in the speeches of citizens going on the air without prior recording.

This list is exhaustive and is not subject to broad interpretation.

For example, a reference by media representatives to the fact that the publication is advertising material cannot be excused from liability.

In such cases, the compliance of information with reality must be proved by a citizen, an individual entrepreneur and a legal entity from which such information was received, and, if the claim is satisfied, the media body may only be obliged to report the court decision.

It would be good to expand this norm with additional cases.

As it seems, one of such cases, at least, can and should be the norm from the adjacent law “On Television and Radio Broadcasting”. Article 45 of this law provides that “*the broadcasting organization and its employees are not responsible for the dissemination of information that does not correspond to reality, if: it is a verbatim reproduction of materials distributed by another mass media or news agency, with reference to it*”.

In the law on the mass media of the Russian Federation, we found a similar norm (Article 57), according to which *“the editorial board, editor-in-chief, journalist are not responsible for disseminating information that does not correspond to reality and that discredit the honor and dignity of citizens and organizations, or infringe on the rights and legitimate interests of citizens , either harmful to the health and (or) development of children, or constituting an abuse of freedom of the media and (or) the rights of a journalist: if they are a verbatim reproduction of messages and materials or their fragments, disseminated by another mass media, which can be identified and involved to responsibility for this violation of the legislation on the mass media* ”.

It should be noted that the norm of Article 57 of the RF Mass Media Law is much wider than the Article 26 and 45 of the domestic laws on the media and TRB.

In addition to information that does not correspond to reality, the Russian legislator excused the editorial board, editor-in-chief and journalist from responsibility for the dissemination of those infringing on other rights and legitimate interests of citizens (for example, the right to protect personal and family secrets), or harming the health and development of children, and finally, for abuse of freedom of the mass media and / or the rights of a journalist, and this is Article 23 of the Law of the Kyrgyz Republic on Mass Media with its large list of information not subject to public dissemination, consisting of 10 points. The interpretation of the Russian norm is broader and in terms of subjects exempted from liability, if in the Law of the Kyrgyz Republic on the media there are only mass media, then in the Russian one, in addition to the edition, the editor-in-chief and the journalist are also indicated.

On this issue, in our opinion, a great expert in the field of media law, Doctor of Philology Richter A.G.,to the works and the position of which we referred more than once above, has very clearly expressed his position;

*“Speaking about another mass media that can be identified and brought to justice, the law does not mean any publications and resources at all (including on the Internet), but only mass media, and most likely, registered ones. Let us pay attention to the fundamental possibility of exemption from liability in case of reprinting by domestic media of materials from foreign sources. Applying the norm of clause 6 of Article 57 of the law on mass media, the Supreme Court demands to take into account that “other mass media” means not only the mass media registered in our country. He points to cases when in the Russian media it is possible to reproduce materials from foreign media and not be held responsible for this in accordance with Article 57. In this regard, we note that we are no longer talking about registered foreign media, since special registration of media outlets is for abroad is usually absent.”[[30]](#footnote-30)*

In his work entitled “Legal Foundations of Journalism”, the author often refers to the Supreme Court, and to be more precise, to the Resolution of the Plenum of the Supreme Court of the Russian Federation “On the Practice of Application of the Law of the Russian Federation” On Mass Media "by the Courts.

In the preface of his work, he said this about it: (we present the most interesting theses in our opinion):

*“The content has been brought in line with the changes that have occurred in Russian legislation and in judicial practice over the past years. Particular attention is paid to the current decisions of the plenum of the Supreme Court of the Russian Federation on the application of legislation on the media.*

*The chapter “The Internet and its Legal Regulation” that existed in previous editions was removed due to the fact that with the development of new technologies almost all Russian media exist online, and the legal regulation of online publications is increasingly difficult to separate from the legal regulation of traditional media and vice versa.*

*Examples of how the activities of media and journalists are regulated abroad, including in the post-Soviet states, have been removed. This was done due to the fact that foreign experience has largely lost its theoretical and practical relevance for media law in Russia.*

The Plenum of the Supreme Court of the Russian Federation “On the Practice of the Application of the Law of the Russian Federation “On the Mass Media” by the Courts of the Russian Federation” issued clarifications concerning the application of legislation regulating freedom of speech and freedom of the media on June 15, 2010.

The Resolution of the Plenum of the Supreme Court of the Russian Federation is aimed at establishing uniformity in judicial practice in resolving cases related to the activities of the media. The Resolution addresses, in particular, the issues of registering sites on the Internet as mass media (Internet media), determining the composition of persons participating in the case of the production and distribution of mass information, providing information to the media on the activities of courts, establishing responsibility for the dissemination of information constituting an abuse of freedom of expression and freedom of the media.

For example, it is indicated that websites on the Internet are not subject to mandatory registration as mass media. At the same time, the attention of the courts is drawn to the fact that the registering authority does not have the right to refuse to register a website on the Internet as a mass media due to an exhaustive list of grounds for refusing state registration of mass media established by law.

Officially registered online media will be liable for comments from readers on the forum that constitute an abuse of freedom of the media (i.e. propagandize, including social, ethnic or religious hatred), only if such comments remain accessible to users site after a request from the regulatory body to remove or edit the comment.

The Resolution also provides clarifications, in particular, on the procedure for resolving disputes concerning the dissemination of information about the personal life of citizens in the media (courts are recommended to distinguish between reporting the facts of the performance of functions by officials and public figures, and reporting details of the private life of a person who is not involved in public activity), disclosure of the source of information that served as the basis for publication in the media, and some other issues.

In some cases, in our opinion, this model could form the basis of information legal relations, into the legislative base and into law enforcement practice. But in order for the law enforcement practice to work in a legal manner, a more clearly spelled out legislative platform is needed. If now progressive norms are laid in the Law on Mass Media, the next step should be the Plenum of the Supreme Court of the Kyrgyz Republic, and it is also worth putting a lot of effort in this direction. The law will not be able to cover all the details that were mentioned in this work, but some of the norms that are recommended in the resolution of the Plenum of the Supreme Court of the Russian Federation can be legally incorporated into our current legislation on the media.

There are enough questions on which clarifications and interpretations are needed, and it is not possible to make changes and additions only to various problematic sectoral legislative acts without changing the media law due to the complexity of the justification, as well as the complexity of the discussion procedures.

**Resume**

***1.Definition of concepts in the Law on Mass Media***

*The main omission made by the legislator in the current version of the Law of the Kyrgyz Republic “On Mass Media” is the lack of a united concept of “mass media”.*

*The definition of mass media given in Article 1 of the Law of KR “On Mass Media” is not fully consistent with the norms of its other articles. In one case, the media is viewed as an object, and in the other - as a subject of the relevant legal relationship. Categories such as “books” and “one-off publications”, in no way should have been included in the category of the media by their nature. It is necessary to exclude them from the law. When defining the concept of mass media, it is necessary to exclude the listing of objects of information legal relations and replace it with a definition with qualifying features or a list of criteria with indicators.*

*It is proposed to consider two approaches or standards. These are Russian and European (Council of Europe standards) experiences.*

*According to the Russian approach, the mass media means printed, audio, audiovisual and other forms of periodic distribution intended for an unlimited circle of people, having a permanent name, and published at least once a year.*

*The Russian approach has legalized new media, providing for the possibility of registration of online publications, which are understood as a site in the information and telecommunications network “Internet”, registered as a mass media in accordance with the Law.*

*We found the European approach to this issue more interesting due to the depth of study of changes in the media sector, taking into account not only traditional media, but also the arrival of new participants.*

*Recommendation CM / Rec (2011) 7 of the Committee of Ministers to member states on a new concept of media (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the permanent representatives of ministers).*

*To this end, based on the existing standards of the Council of Europe, recommendations are given to governments on how to apply media standards to activities, services or actors in new media.*

*Media policy makers are encouraged to consider the following criteria when considering whether to treat specific activities, services or participants as media outlets.*

*Having studied the European experience, the authors came to the conclusion that this approach is very flexible and suggests considering the criteria for the media by analogy.*

*Summarizing all six criteria, the European standards give us the following concept of the media: it is a team of journalists working according to professional standards and in compliance with generally accepted ethical norms, having an editorial policy, possibly officially registered as a media (voluntary registration) and having a name, with a wide distribution coverage (provision of) information (circulation, number of viewers or users), more frequent frequency and a variety of available information (news release).*

*Define “Information Agencies” (IA), clearly set their status. At the same time, it is not easy to give a definition in the conceptual apparatus, but to highlight it in a separate article. In this case, the above criteria for the media can be used based on the experience of the Council of Europe.*

*Summing up all of the above, in our opinion, an information agency ideally is, first of all, an editorial office that generates news information, with a network of news offices or correspondents in the regions, which is subject to the media regime.*

***2.Prohibition of censorship***

*In accordance with clause 2 of Article 1 of the Law of the Kyrgyz Republic “On Mass Media” “censorship of the media is not allowed.”*

*Censorship should be understood not only as the possibility of direct pressure to prevent the dissemination of information, but also indirect influence on the media in order to correct their substantive work. Such interaction should be recognized as interaction in various forms, including illegal nationalization or other transfer of media assets, the imposition of unreasonably high compensations in cases of protection of honor and business reputation, as well as the imposition of arrests on property.*

*The imposition of restrictions on the markets in which the media operate, hindering the dissemination of information that has already been put into civil circulation (to suspend or stop the dissemination of inappropriate information), the use of force against journalists or the expression of threats aimed at limiting the performance of their professional duty, raider grips of the media.*

*It is necessary to introduce into the current law a separate section on the concept of censorship, not limited to one article. Describe in detail all the possible ways in which the practice has already had cases and those that were voiced above.*

*Recommend to legislators to establish criminal liability as a separate corpus delicti for censorship in the sense in which it will be defined in the Law of the Kyrgyz Republic on mass media after possible amendments.*

*It should also provide for administrative liability for obstructing professional journalistic activities, which should be understood as the commission of actions aimed at hindering the work of journalists that do not constitute a criminal offense, or supplement the Code of Misconduct in the current Article 89 with new offenses, such as, for example, for collecting information (when covering rallies, processions, etc.), and not just for distribution. Thus, expanding the range of subjects of the offense.*

***3. Media registration***

*Important to pay attention to article 20, which restricts registration if it is prohibited by a court act or by an official (investigator, bailiff). It is clear with the court's act: it refers to the rule about founders who cannot be such if they are serving a sentence in places of deprivation of liberty; however, the role of the investigator and bailiff is not clear at all. What document these officials should provide in order to deny registration of the media.*

*The Articles 23 and 24 of the Regulations require an application for state registration of a media outlet, which must contain certain information and must be accompanied by a copy of the media manager's passport or other document recognized in accordance with the legislation of the Kyrgyz Republic as an identity document. It is not clear whose document is needed, the future editor-in-chief of a media body or the executive director of a legal entity (then it was necessary to indicate so), and why are they needed if there is a founder?*

*We believe that it is unnecessary, at least at this stage, just as the requirement to indicate funding sources and program goals and objectives. These requirements are formal, they are not part of anyone's functions to check or further recheck them, then why are they needed. They should be excluded from the Regulation.*

***4. Editorial office and Regulation***

*The authors propose to fill the existing organizational and legal vacuum and introduce such concepts as “editorial office” and the so-called “editorial board” into the Law on Mass Media. At the same time, the charter of the editorial office should be called “internal regulations of the editorial office” (hereinafter the charter or regulation), so that there is no confusion with the charter of the organization (legal entity), possibly, to make functional responsibilities wider than just the release of mass media.*

*To accept the Regulation of the editorial board, it is necessary to define the editorial board itself. The editorial office can also be a legal entity, an independent economic entity, organized in any form permitted by law.*

*The editorial office is headed by the editor-in-chief, who exercises his powers on the basis of the law, the charter of the editorial office, an agreement between the founder and the editorial office (editor-in-chief) The editor-in-chief represents the editorial board in relations with the founder, publisher, distributor, citizens, associations of citizens, enterprises, institutions, organizations, government bodies, as well as in court. He is responsible for meeting the requirements for the activities of the media by law and other legislative acts*

*The editorial office (editor-in-chief) can act as the founder of the mass media, publisher, distributor, owner of the editorial office's property.*

*The internal regulation of the editorial office (hereinafter referred to as the Regulation) of the mass media is adopted at a general meeting of the journalists’ staff - full-time employees of the editorial office, by a majority vote in the presence of at least two-thirds of its composition, and is approved by the founder.*

*The Regulation of the editorial office, organized as a legal entity, may simultaneously be the charter of this legal entity. In this case, the charter of the editorial office must also comply with the legislation on the registration of legal entities.*

***5. Suspension and termination of media activities***

*The grounds and procedures for the termination of media activities must be spelled out in the Law of the Kyrgyz Republic "On the Mass Media" and include the following components:*

*1. The founder has the right to terminate or suspend the activities of the mass media only in cases and in the manner provided for by the internal regulations of the editorial office, or by an agreement between the founder and the editorial office (editor-in-chief).*

*2. The grounds for the termination of the activities of a mass media by a court must be repeated, within one year, violations of the requirements of Article 23 of this Law by the editorial office, about which the authorized body (in our case, it is the Information Department under the Ministry of Culture, Information and Tourism) sent written warnings to the founder or editorial office (to the editor-in-chief), as well as failure to comply with a previously adopted court order to suspend the activities of the media, if such a provision remains in the law.*

*The warning must be a non-normative act of the authorized body, which is issued in order to prevent violations of the legislation on the mass media and indicate their inadmissibility.*

*3. Identify one single body with the mandate to carry out regulatory functions in the industry. The control procedures should detail the grounds for applying liability. Only the supervisory authority has the right to initiate the termination of the activities of the media. Any regulatory action that affects media freedom can be challenged in court.*

***6. Inadmissibility of abuse of freedom of the media***

*The list of information not subject to public dissemination is contained in Article 23 of the Law of the Kyrgyz Republic “On the Mass Media”.*

*It is important to note that some provisions of the list of prohibitions raise questions regarding their functionality in law enforcement practice. In particular, propaganda of war, violence and cruelty, national, religious exclusivity and intolerance towards other peoples and nations are indeed extremely socially dangerous acts, they are criminalized by the Criminal Code.*

*To overcome this problem, it is necessary to bring the point “c” of Article 23 of the Law of the Kyrgyz Republic “On Mass Media” into line with the provisions of Article 313 of the Criminal Code of the Kyrgyz Republic. A similar adjustment should be made in relation to a number of other provisions of Article 23: paragraph “b” must be brought in line with the provisions of Article 310 of the Criminal Code, paragraph “h” - with the provisions of Article 175 of the Code of the Kyrgyz Republic on Misconduct.*

*Concepts such as insulting the “civil honor of peoples”, “religious feelings of believers and worshipers” should not be present in the legislation, as they refer to values ​​that do not have formal expression and consolidation.*

***7. Access to information. Rights and obligations***

*The obligation to comprehensively verify the disseminated information, in turn, lies at the heart of socially responsible journalism, the rights of which are protected by the legislation on the media.*

*It is necessary to make additions to the Law on Mass Media, prescribing specific terms for the response of state bodies and local self-government bodies to a journalist's request, which cannot exceed 5 days.*

*If the request concerns the protection of the rights and freedoms of a citizen, the state of the environment, accidents, disasters, dangerous natural phenomena or other emergencies that have occurred or may occur and threaten the safety of citizens and the state, the period for preparing a response is set* ***up to 2 days****. The above cases can be extended.*

*With regard to access to information held by organizations with a private form of ownership, it is necessary to stipulate in a separate clause that enterprises, institutions and organizations and their officials are obliged to provide the media with the opportunity to familiarize themselves with information of public interest, affecting the rights and freedoms and legitimate interests of citizens. For this category of information owners, regardless of legal entities or individual entrepreneurs, or joint stock companies with a mixed form of ownership, set a period* ***of 10 days****.*

*At the same time, it is necessary to clearly spell out the concept of socially significant information in the Law, or specify a list of such information. As such, when deciding whether to classify certain information as state secrets, officials vested with such a right should take into account that certain information cannot be a state secret. This information: 1) on natural disasters and emergencies that threaten the safety and health of citizens; 2) on disasters and their consequences; 3) on the state of affairs in the environment, the use of natural resources, health care, sanitation, culture, agriculture, education, trade and law enforcement ; 4) on the facts of violation of the law by state bodies, local self-government bodies and organizations, their officials; 5) facts that infringe on the rights and legitimate interests of citizens, as well as create a threat to their personal safety. (Article 11)*

*We propose that this list of information, which is not subject to classification, be legally classified as socially significant information and recommend that lawmakers take it as a guideline, expanding it if possible.*

*To disclose socially significant problems and draw attention to them, including in the process of conducting a journalistic investigation, the press, no doubt, must have the ability to use covert audiovisual equipment.*

***8. Media relations with others***

*In accordance with the Article 18, the media body is given the right not to disclose the name of the person who provided the journalist with information, unless required by the court. It should be noted that this is one of the paragraphs of the article that works in favor of the journalist, but the rest can significantly harm the activities of the media and directly to the journalist.*

*According to the second paragraph, the Mass Media Body is prohibited from “disclosing the data of inquiries, preliminary and judicial investigations without the written permission of the inquiry body, investigator, prosecutor and court.” This norm is censorship for the journalistic community and it is necessary to exclude this point from the law.*

***9. Media liability and cases of exemption***

*The law defines cases when a media body is not responsible for the dissemination of information in the media that does not correspond to reality (Article 26). The article is called "Cases of exemption from liability for the dissemination of information that does not correspond to reality." This article defines four positions that protect the media and journalists in their daily work. This norm needs to be expanded by additional cases.*

*One of such cases, at least, can and should be the norm from the adjacent law “On Television and Radio Broadcasting”. Article 45 of this law provides that “the broadcasting organization and its employees are not responsible for the dissemination of information that does not correspond to reality, if: it is a verbatim reproduction of materials distributed by another mass media or news agency, with reference to it”.*

*In addition to information that does not correspond to reality, the Russian legislator excused the editorial board, editor-in-chief and journalist from responsibility for the dissemination of those infringing on other rights and legitimate interests of citizens (for example, the right to protect personal and family secrets), or harming the health and development of children, and finally, for abuse of freedom of the mass media and / or the rights of a journalist, and this is Article 23 of the Law of the Kyrgyz Republic on Mass Media with its large list of information not subject to public dissemination, consisting of 10 points. The interpretation of the Russian norm is broader and in terms of subjects exempted from liability, if in the Law of the Kyrgyz Republic on the media there are only mass media, then in the Russian one, in addition to the edition, the editor-in-chief and the journalist are also indicated.*

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10. Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/588> [↑](#footnote-ref-10)
11. Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/589> [↑](#footnote-ref-11)
12. Referring to the laws “On Mass Media” and “On the protection of the professional activity of a journalist" [↑](#footnote-ref-12)
13. Article 8 of the Law of KR “On the protection of the professional activity of a journalist” dated 5.12.1997, No. 88. [↑](#footnote-ref-13)
14. “Legal environment for development and operation of the media in KR”. Alagushev A.K., Alisheva N.I., Bishkek, 2010. [↑](#footnote-ref-14)
15. Legal foundations of journalism. Textbook. A.G. Richter - 2016 [↑](#footnote-ref-15)
16. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic of February 13, 2015 No. 4 [↑](#footnote-ref-16)
17. Art. 4 of the Law of the Kyrgyz Republic “On the protection of professional activities of a journalist” [↑](#footnote-ref-17)
18. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic dated February 13, 2015 No. 4. p.13. [↑](#footnote-ref-18)
19. Approved by the Decree of the Government of the Kyrgyz Republic of 03/15/2019 No. 121. [↑](#footnote-ref-19)
20. Monitoring of violations of freedom of speech in Kyrgyzstan in February 2010, Bulletin of the NGO “Journalists”, Bishkek, 2010. [↑](#footnote-ref-20)
21. Memorandum on the Laws of Kyrgyzstan "On the Mass Media" and "On the Activities of Journalists" - ARTICLE 19, London, 2005, p.14. [↑](#footnote-ref-21)
22. Article 20 of the Law of the Russian Federation "On the Mass Media", 1991 [↑](#footnote-ref-22)
23. **Article 261-1. Application submission**

    1. The prosecutor, within the limits of his competence, has the right to apply to the court for the recognition of information materials as extremist or terrorist, which call for the implementation of such activities or justify or excuses the need for such activities, at the place of their discovery, distribution or location of the organization that produced such materials in compliance with the rules on the jurisdiction established by Chapter 4 of this Code. 2. At the request of the prosecutor, the court shall have the right to temporarily restrict access to information materials pending a decision in the manner prescribed by Chapter 14 of this Code. [↑](#footnote-ref-23)
24. <http://media.kg/wp-content/uploads/2020/05/predlozheniya-i-zamechaniya-k-proektu-zakona-kr-o-vnesenii-izmenenij-v-gpk-kr.pdf>, <http://media.kg/wp-content/uploads/2020/04/analiz-proekta-zakona-kr-o-vnesenii-izmenenij-v-grazhdanskij-proczessualnyj-kodeks.pdf> [↑](#footnote-ref-24)
25. «Развитие медиа права в Кыргызской Республике», Алишева Н.И., Голованов Д.А., Усенова Б.Д., Б.: 2015 г. , ОФ «Институт медиа полиси». <http://media.kg/publications/razvitie-media-prava-v-kr-2/> [↑](#footnote-ref-25)
26. Ruling of the Supreme Court of the Russian Federation “On the Practice of Application of the Law on Mass Media by the Courts of the RF” - 2010 [↑](#footnote-ref-26)
27. Legal foundations of journalism. Textbook. A.G. Richter - 2016 [↑](#footnote-ref-27)
28. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic of February 13, 2015 No. 4 [↑](#footnote-ref-28)
29. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic of February 13, 2015 No. 4 [↑](#footnote-ref-29)
30. Legal foundations of journalism. Textbook. A.G. Richter - 2016 [↑](#footnote-ref-30)