

OSCE Perspective: Recent Freedom of Expression and Information Cases in Kazakhstan
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Case 1 – Suspension of publications based on mistakes in imprint information

Facts: Alia Ismagulova, 22, is the editor and publisher of Pravdivaya gazeta (Newspaper of Truth) in Almaty, Kazakhstan. The District Public Prosecutor's offices in Almaty filed one petition after another against her newspaper in the district courts under Art. 350 of the Administrative Code of Kazakhstan.

Prosecution: The first petition was in April 2013 and sought to fine Ismagulova 20 times the amount of the daily minimum wage (approximately \$12) and confiscation of the total print-run of one issue of the newspaper. Then in August of the same year prosecutors petitioned to suspend the publication for three months. Finally in November 2013 they filed another petition to fine the publisher an amount equaling 100 times the minimum wage, seize the print-run and again suspend the publication for 3 months.

District courts: The District Court found that, in the first case, the imprint of Pravdivaya gazeta did not state the frequency of the publication. In the second case it concluded that the print-run, while listed as 8,000 copies, was in fact 6,000 or 7,000. In the third case, the court found that the newspaper was printed and disseminated on 20 November 2013 while the stated date was 22 November, the first day when the suspension expired. Thus it agreed with the prosecution that the owner tried to fool law enforcement. Moreover the imprint information was blurred when printing thus causing confusion regarding the number and date of its registration certificate.

The District Court noted that Ismagulova did not admit her guilt but provided explanations. For example, the defendant said that the imprint mistakes were made because the editorial office is new, it could not find the funds to print the stated circulation, but wanted to "keep the image" of the publication.

The district courts affirmed the petitions in all three cases.

Appeal and new demands by prosecution: On 28 December 2013 the Almaty City Court dismissed the appeal of Ismagulova and upheld the latest decision of the administrative court of first instance.

On 10 January 2014 the District Public Prosecutor filed a new petition in District Court which sought to terminate the registration of Pravdivaya gazeta and effectively shut down the publication. According to the statute "On the mass media" (para 4 Art. 15) a failure of a news outlet to eliminate the causes of its suspension within the prescribed period may be a reason to terminate it.

The court will decide the case shortly.

Parallel developments: In a similar case, in September 2013 an administrative court fined the editor of Pravda Kazakhstanana an amount equal to 10 times the minimum wage for failure to state in the imprint an updated registration certificate that the newspaper was to obtain due to a change of editor. The publication was suspended for three months. The change of editor

took place in 2007, the requirement to reregister was abolished in 2009 and the new certificate, dated 25 August 2007, was obtained by the editor only in August 2013. The Almaty City Court upheld the decision in October 2013.

OSCE reaction: These court decisions were based on the Administrative Code of Kazakhstan, which was recently amended, and strongly criticized by the OSCE media freedom representative. A legal expert commissioned by the Representative recommended abolishing harsh administrative sanctions such as seizure of the print-run and suspension of publications for minor offences.¹

“The recent cases of suspensions of Pravdivaya gazeta and Pravda Kazakhstana for several months for just having indicated a wrong periodicity or a slightly different press run are examples of such disproportionate sanctions,” Mijatović said in a statement on 3 September 2013.²

“I hope Kazakhstan’s parliament will eliminate this kind of sanctions from the Administrative Code, as they are used to silence members of the media.”

On 27 September 2013 the Representative again expressed concern about recent suspensions of newspapers.

“This situation shows the urgent need for legislative reform, including abolishing the practice of suspensions from the Administrative Code,” Mijatović wrote in a letter to Foreign Minister Erlan Idrissov.

“Technical violations such as misstating a press run or taking a holiday break should never result in penalties as this undermines the fundamental right of freedom of expression,” Mijatović said. “Sanctions should never lead to the closure of media outlets because they deprive citizens of choices in seeking information.”

Case 2 – Respublika as a continuous media outlet

Facts: An oil workers’ strike in the east Kazakhstani town of Zhenausen in 2011 which led to clashes, victims, and emergency rule served as a good excuse for the authorities to tighten their grip on free media in the country.

Opposition political activist Vladimir Kozlov was convicted in 2012 of social hatred and calls for violent overthrow of the government and undermining national security in particular in his appeals to the strikers in Zhenausen. The verdict to imprison him for 7.5 years was criticized by Human Rights Watch.

As Kozlov was an ally of the key oppositional oligarch Mukhtar Ablyazov and also ran some of the opposition media, the media were basically blamed for the same crimes he was.

Prosecution: In November 2012 the City Prosecutor of Almaty filed a petition with a district court to close 18 media outlets, including 10 websites. It should be noted that in Kazakhstan

¹ The full text of the legal review is available in Russian at <https://www.osce.org/ru/fom/104489>

² See <http://www.osce.org/fom/104495>

all websites are to be registered as mass media because they are covered under the statute “On the mass media.”

In the petition the prosecutor asked that all of the outlets, along with “any other [unnamed] means of periodic or continuous public dissemination of the produce of the mass outlet ‘Respublika’ as a unified mass media outlet ‘Respublika’.” He also sought the unified mass media outlet ‘Respublika’, shut down, including the 18 sublets in the list.

The prosecutor acknowledged that the media listed in the petition have different owners and publishers and are formally independent each other. Despite that he argued that the newspapers and online resources were *de facto* a form of dissemination of one and the same mass media outlet – Respublika – while a series of stories therein were aimed at incitement of social animosity, they also had elements of propaganda of the violent takeover of state power and of undermining state security, which contradicts the law.

Examples of the crime were also brought up, such as the following statements in an interview:

“The elite have no conscience, and the core problem is that I see moral defects of the government.”

“Fairy tales on development and prosperity of Kazakhstan are ruined by the prose of life: the bans proliferate, poor become poorer, corrupt people become richer. The number of disgruntled people and dissidents grows in all regions of Kazakhstan.”

Altogether four stories were given as evidence, together with an expert opinion provided by the laboratory of the Ministry of Justice. The expert opinion found evidence of incitement of social animosity and propaganda of the violent takeover of state power. The prosecution also argued that the verdict in the Kozlov trial pointed “in a conceptual way” that the materials published was intended to incite social animosity.

The prosecution observed that recently mass media have begun to use “a combined form of public dissemination of mass information (such as print and online.)” Therefore any restrictions should affect the “whole entirety of objects that serve as means and form of public dissemination of mass information.”

The prosecution also pointed out that, despite closure in the past of several newspapers, Respublika managed to continue dissemination of its materials via other resources that either had the word Respublika in the title or were written by the same journalists and editors or had the same design elements. It also sent the message to the audience that a new outlet continued the policy of Respublika. As proof the prosecution introduced two stories published in 2005 and 2009.

The prosecution believed that this proved the singular nature of the different media and substantiated the need to ban all media that could possibly be associated to this group now and in the future.

The defendant pointed out that many of the media under the prosecutor’s petition were not reviewed by the experts nor alleged to have been shown to violate the law. Some of them never published the four stories claimed to be illegal but they were still threatened with closure. There was no ban to republish newspaper stories online. The defendant argued that

the petition violated the International Covenant on Civil and Political Rights. Other defendants claimed that as they were registered businesses in other countries they were not subject to the jurisdiction of Kazakhstan courts. The defendants claimed that the law did not speak of a “united mass media outlet,” and the prosecution simply attacked the opposition media that dared to criticize the government.

District court: On 25 December 2012 the District Court issued a ruling which repeated the arguments of the prosecution and also found links (including family links) among the owners, founders and a “unified editorial office” of Respublika and Kozlov. Many of the editorial offices were or are at the same address.

It found precedence in the ruling in the Kozlov criminal case for the civil case under its review.

The expert opinion of the Ministry of Justice was upheld and the court noted that the Ministry provided an expert opinion in the Koslov case which was accepted by the relevant court.

The court then banned all 18 media outlets as part of the unified media outlet Respublika, which would also include any other means of periodic or continuous dissemination of the product of this outlet. The Ministry of Information and Ministry of Communication were authorized to implement the decision.

Appeal: The decision was upheld on appeal on the 22 February 2013 by the City Court. Interestingly enough, the decision on appeal does not even quote the arguments of the appellants (Respublika). On 6 June 2013 it was affirmed by a higher appeals court – the Cassation Collegium of the Almaty City Court.

OSCE reaction: On 29 November 2012 the OSCE Representative on Freedom of the Media, Dunja Mijatović, expressed concern that legal proceedings initiated against several media outlets in Kazakhstan might severely undermine media pluralism in the country.

In the letters she sent earlier to Foreign Minister Erlan Idrissov and Presidential Adviser Yermukhamet Yertisbayev, she stated that the “government and the judiciaries should not fight threats to our societies on allegations alone, thereby jeopardizing media pluralism, which is a vital OSCE commitment. I remain hopeful that the Kazakh authorities will find a solution that will honor their OSCE media freedom commitments.”