АДИЛЕТ
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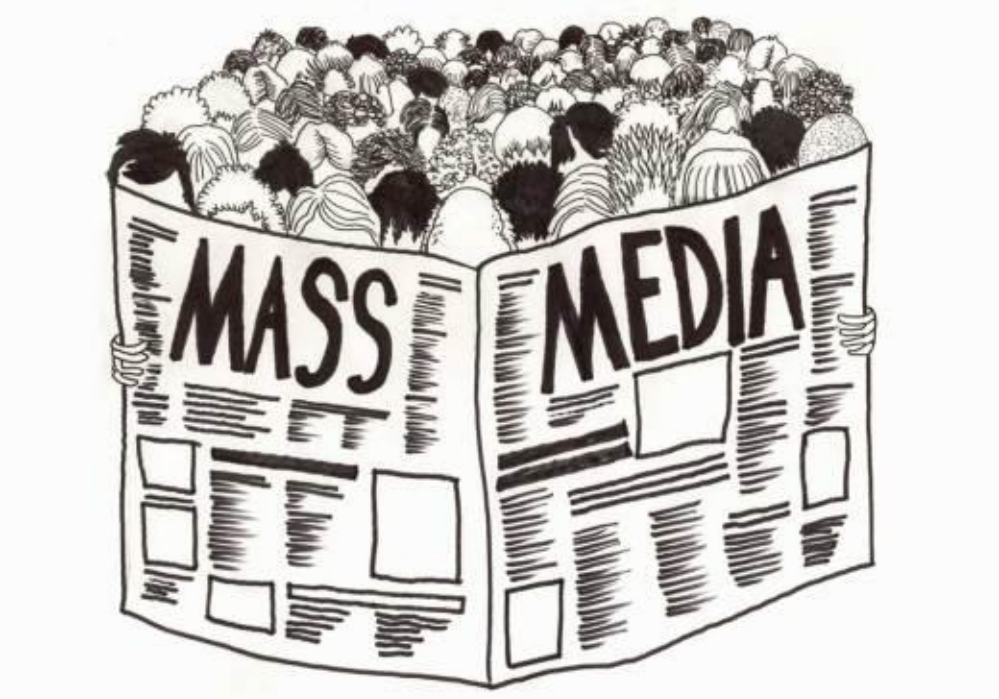
ANALYSIS OF INTERNATIONAL STANDARDS, NATIONAL LEGISLATION AND LAW ENFORCEMENT PRACTICE IN KYRGYZSTAN IN THE FIELD OF OBSERVANCE OF THE RIGHT TO FREEDOM OF SPEECH AND INFORMATION

Bishkek, 2017



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INTRODUCTION

In the history of civilization progress, information has always played defining role and served as a foundation for decision making at all levels and stages of the society and state development.[1] As a subject of attention and use of it by the person information accompanies him in all of his actions and relations, it is a unique human environment. Along with the growth of role and need for information in our life, with formation of civil society reconsideration of meaning of "information" is taking place, of its main types, characteristics and relations associated with it.[2] In today's environment, information is becoming a strategic resource, from efficient use of which economy development perspective, formation of informational civil society, protection of state and its citizens' security depend on.[3]

Civil Code of the KR in article 22 defines information as one of the types of civil rights objects, alongside with other types of objects, it establishes legal regime for use and protection.[4]

Representatives of civil society, scholars, the mass media and governments of different countries constantly discuss the significance of the right to information. Right to information is a natural and inalienable right of a human being and citizen. Freedom of information – is one of the key features of civil society. Mass information is one of the varieties of information. In this way A. Malinovsky who dedicated his PhD thesis for researching issues of freedom of mass information, defines mass information as "combination of data adequately reflecting the processes of social life, intended for unlimited range of persons, distributed by mass media by means of special technical systems and equipment".[5]

Article 1 of the Law of KR "On Mass Media" contains list of mass media outlets which includes newspapers, magazines, their applications, almanacs, books, newsletters, non-recurrent publications meant for public distribution, having permanent publication title, also TV, broadcasting, film and video studios, audiovisual records and programs released by public authorities, news agencies, private individuals, political, social and other organizations.

American journalist D. Cater named the press, radio, TV as "fourth" (after legislative, executive and judicial) branch of power. This metaphor has become widespread, and to a large extent due to the efforts of media. Without a doubt, the media, being one of the most important institutions of modern society, plays a dominant role in ensuring freedom of information, being at the same time the main tool for expression and formation of public opinion. Media has gained special importance in modern society with development of technical means of communication, amongst them a television. Perception and interpretation

[1]Boer V. M., Paveleva O. G. Information law: textbook. Part 1; GUAP. - St. Petersburg., 2006. - available at http://lib.sale/pravo-informatsionnoe/informatsionnoe-pravo-boer.html.
[2]Bachilo IL, Lopatin VN, Fedotov MA Information Law of SPb: Legal Center Press, 2001. - available at http://lib.sale/pravo-informatsionnoe/informatsionnoe-pravo-bachilo.html.
[3]See: Ibid.
[4]CC KR. Art.22. Types of objects of civil rights "Objects of civil rights include things, including money and securities, other property, including property rights; Works and services; Protected information, the results of intellectual activity and equated to them means of individualization (intellectual property), as well as other tangible and intangible benefits".
[5]Malinovsky A.A. Freedom of mass information: Theoretical and legal aspects. Moscow, 1995. - available on http://www.dissercat.com/content/svoboda-massovoi-informatsii-teoret-pravovye-aspekty.

of the most important developments and events taking place in Kyrgyzstan and in the world are carried out through the media and with the help of media.

In international law, access to information and freedom of expression are two sides of the same coin, and with the expansion of the Internet and digital technologies, they have grown in leaps. At the same time, attempts to control freedom of speech and information are being made, from both governments and private individuals. It can take the form of censorship, restriction of access and acts of violence against those whose views or questions are perceived as something dangerous or wrong.[6]

In Kyrgyzstan, over the years since the acquisition of sovereignty in the system of mass media important changes have taken place. The objectives of this report are: analysis of the legislation status affecting the mass media activities, as well as regulating the right to freedom of expression and freedom of information; preparation of the recommendations on the legislation development and law enforcement practice to guarantee the protection of freedom of speech and freedom of information.

The presented document contains three sections:

- **First section** presents brief overview of the situation regarding observance of the mass media freedom in the world and Kyrgyzstan in the context of ensuring security of journalistic profession;
- **Second section** – is devoted to overview of international standards and certain recommendations from international bodies in relation to Kyrgyzstan;
- **Third section** contains analysis of the national legislation and law enforcement practice on observance of right to freedom of speech and information.

[6]See.: https://www.hrw.org/ru/topic/free-speech.

1. A BRIEF SUMMARY OF THE SITUATION REGARDING THE OBSERVANCE OF MEDIA FREEDOM IN CONTEXT OF ENSURING SAFETY OF THE JOURNALISTS

It is impossible to overrate the role of mass media in the modern world. They are one of the key factors of the society development. Mass media plays a significant role in covering state bodies' activities, same in creating system of feedback, monitoring of public opinion and public mood. It is known, society cannot solve none of the modern tasks without participation of mass media. Mass media is integral part of socio-economic, political and cultural life of a society.

Currently, the profession of journalist is becoming more and more demanded in the rapidly developing and changing world. Demand for it is growing due to increase of the information space. A journalist is present everywhere, where tensions are running high, where military actions are conducted, where rallies and debates are held, etc. Anyone who is engaged in journalism, in a daily life experiencing enormous emotional stress, collecting and informing the public about a particular event. Our world is becoming more dangerous from the point of view of the reporter's work. Hundreds of journalists are attacked, intimidated or harassed each year. Many are under surveillance, interception of their telephone conversations and Internet correspondence. Digital technologies allow any person to follow not only ongoing events in real time, but also the content of the reports of individual journalists or the media.

1.1. OVERVIEW OF THE SITUATION IN THE WORLD[7]

According to the World Press Freedom Index[8], issued by the international organization "Reporters without Borders", 2016 demonstrates a high number of attacks on the freedom and independence of journalism by public authorities, some ideologies and private interests. The index, which reflects the degree of freedom of action of local journalists, presented 180 countries from different parts of the world. According to this document, Europe is the freest zone for journalists. It is followed (by a wide margin) by Africa, which is ahead of the American continent. Then it is followed by Asia, Eastern Europe and Central Asia. The Middle East and North Africa remains the region where journalists' rights are least respected. Committee to protect journalists (CPJ) named year of 2016 as record-breaking on number of attacks and arrests of journalists.[9] "Journalists, who collect and disseminate information, perform work on the provision of public services, and their rights are protected by international law. That's why we are shocked that so many governments violate their

[7]Website's material used http://www.refworld.org.ru:
-Committee to Protect Journalists: According to the CPJ census, there are a record number of journalists in prisons, on December 13, 2016; - Committee to Protect Journalists: The number of journalists killed is down from record levels, on December 19, 2016.
[8]World Press Freedom Index 2016: Growing paranoia against journalists. April 20, 2016 - available at https://rsf.org/sites/default/files/cp_general_classement_2016_ru_0.pdf.
[9]Committee to Protect Journalists is an international non-governmental organization headquartered in New York, dedicated to protecting the rights of journalists. The organization collects information about repressions and murders of journalists around the world (note by the author).

international obligations, imprisoning journalists and suppressing criticism ", - stated executive director of CPJ Joel Simon.

Killings of journalists

The international organization "Reporters without Borders"[10] recorded 74 cases of death of journalists around the world in 2016 for reasons somehow related to their work. In the report, published on the organization's website, it is said that in most cases the murders of journalists were committed deliberately and purposefully. Ipso facto killers wanted to hinder their work and intimidate the journalistic community.

Most of the journalists - 19 people - died in 2016 in Syria. Afghanistan is next on the list of the most dangerous countries for journalists, where 10 journalists were killed in less than a year. Organization draws particular attention to the situation in Mexico. There, in 2016, 9 journalists were killed- and this is the worst indicator among countries not at war. As a result, the report stated, even the most courageous journalists begin to censor themselves out of fear that they too may be killed for their work.

According to the organization, despite the fact that compared to 2015 the number of journalists killed has decreased (74 against 110) it cannot be considered as an improvement of the situation in the world.

The report explains that a smaller number of journalists killed is primarily due to the fact that many have refused to continue to work in the largest military conflicts zones, and left dangerous countries. As a result, the organization considers that the number of places where impunity reigns has grown in the world, but no one can learn about it because of the lack of journalists there who could inform the world about what is happening.

According to the "Reporters without Borders", in the past 10 years around the world at least 750 journalists have died in connection with their work.

Detention of journalists

In 2016, the number of jailed journalists in prisons around the world also reached a high record, according to the study of the Committee to Protect Journalists. As follows from the census conducted by the committee, Turkey became the new leader in terms of the number of jailed media employees in 2016, overtaking China.

Because of unprecedented repression against the media in Turkey, the total number of imprisoned journalists in the world has reached a record level since 1990, when the Committee to Protect Journalists began to conduct detailed record of journalists in prisons. According to the data of 1 December, 2016, the total number of journalists-prisoners in the world was 259 people. Under the CPJ's census, there were at least 81 journalists behind bars in Turkey - this is more than in any country at any time since the start of record, and all these people were accused of anti-state activities.

[10]Reporters without borders: in 2016, 74 journalists were killed. December 19, 2016. - available at http://www.bbc.com/russian/news-38363929.

China - the world's main jailer of journalists in 2014 and 2015 - moved to a second place, having 38 jailed journalists. On the third, fourth and fifth places - are Egypt, Eritrea and Ethiopia respectively. The total share of these five countries for imprisonment of journalists is two-thirds around the world. The countries of America, where in 2015 there were no journalists in prisons at all, appear in the 2016 census with a total of four imprisoned journalists.

According to the CPJ census, almost two-thirds of the 259 imprisoned journalists worldwide are accused of anti-state activities. The overwhelming majority of jailed journalists were employees of electronic and/or printed, and approximately 14% - broadcast media outlets. The CPJ census only mentions journalists who are imprisoned in state prisons. It does not include those who disappeared or are held by non-governmental groups. CPJ estimates that at least 40 journalists are missing in the Middle East and North Africa.

1.2. OVERVIEW OF THE SITUATION IN KYRGYZSTAN

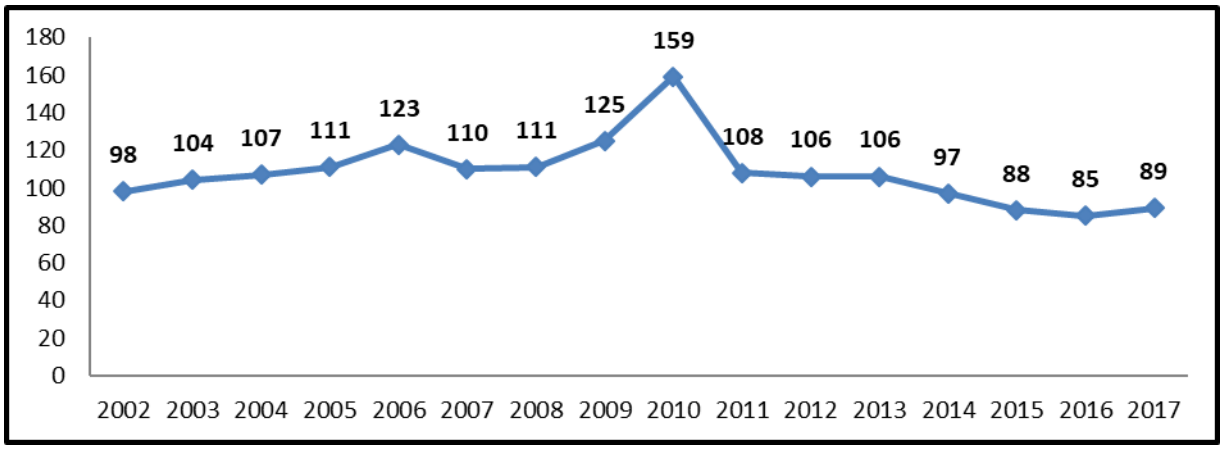
The work of free, independent and impartial media is one of the important foundations of a democratic society. Kyrgyzstan repeatedly declared that ensuring freedom of speech is priority direction of policy. Is this the case?

This section is devoted to a general overview of the situation regarding the right to freedom of speech and freedom of media in Kyrgyzstan in the context of ensuring the safety of journalists and the media. Consider cases of pressure on journalists, bloggers, as well as activists expressing their opinions publicly or disseminating information (including attacks, physical violence, damage to property, criminal and administrative persecution, arrests, censorship, etc.).

As mentioned above, international organization “Reporters without Borders” annually conducts research on the state of press freedom in the countries of the world, Kyrgyzstan, as well as other CIS republics, is involved in the study. Below is a diagram of the results of the studies conducted for the period from 2002 to 2017.

Kyrgyzstan in the "World Press Freedom Index"[11]
(Kyrgyzstan’s position in the ranking amongst more than 180 countries)

[11]Information is available at https://rsf.org. World Press Freedom Index is an annual study and its accompanying rating on the state of press freedom in countries around the world. It is produced by the international NGO Reporters Without Borders, which is a community of organizations working to protect freedom of the press and the rights of journalists. The index assesses the degree of freedom that journalists and information organizations, including print, broadcast and online media, use in a given country, as well as the authorities' efforts to respect and ensure respect for this freedom. The Index was first presented in 2002 to 139 countries. The study is based on the methodology of expert assessments. Conclusions on the state of freedom of the media in this or that country are made by the experts of the organization on the basis of 43 key indicators.



The diagram clearly shows how the situation with freedom of the press in Kyrgyzstan has changed, gradually worsening, since 2002. The worst condition was recorded in 2010, Kyrgyzstan ranked 159th in the world ranking (study of 2010 was conducted in 172 countries).[12] In 2017 the deterioration of the situation was again noted in comparison with 2016 and 2015.

In the report of another international organization Freedom House "Freedom of the press 2016", Kyrgyzstan was designated as a "partly free" country.[13]

It should be noted that journalists and the media outlets are free as much as they are allowed by laws, authorities and society in general. Conclusions about the state of freedom of the media in this or that country are made by experts of "Reporters without Borders" on the basis of such indicators as:

- ✓ Existence of different kinds of violations against journalists (killings, imprisonment, physical violence and threats);
- ✓ Existence of various kinds of violations against media outlets (censorship, bans and confiscations of issues, closure of publications);
- ✓ Level of self-censorship in media;
- ✓ Level of political and financial dependency of media;
- ✓ Status of legal environment in the media (penalties, state monopoly, existence of regulatory body);
- ✓ Possibility of free access of citizens to Internet
- ✓ And so on.

Consider how things are in Kyrgyzstan in terms of the safety of journalists, the media, as well as ensuring of freedom of speech.[14] This section does not address the issue of legal assessment of violations of rights of journalists, media, bloggers that took place during the review period. Some specific situations were brought as examples (on publications of sites PF "Media Development Center", PF "Institute of Media Policy", analytical resource Vesti.kg and other news websites), indicative of violence/pressure on media, journalists and bloggers in Kyrgyzstan.

[12]Information is available at https://rsf.org/fr/kirghizistan.
[13]Information is available at https://freedomhouse.org/report/freedom-press/freedom-press-2016.
[14]Information of PF "Media Development Center" was used - http://medialaw.kg and PF "Institute of Media Policy" - http://www.media.kg.

Unfortunately, in Kyrgyzstan over the past 10 years there have been serious violations of the rights of journalists that forced some of them to leave Kyrgyzstan.

Journalists forced to leave Kyrgyzstan for professional reasons during the period of 2006-2009.[15]

- ✓ **November 2006** – Turat Bektenov - journalist of TRC "Pyramid" was beaten. The former chief-editor of TV channel "Pyramid" did not feel any direct pressure from authorities, but he could not find work anywhere. Since 2007 he has been living in Switzerland.
- ✓ **March 2007** – Kairat Birimkulov – employee of state owned TV Radio Corporation was beaten. He linked the attempts to murder him to his investigations on corruption cases in State Enterprise "Kyrgyz rail roads". Lives in Switzerland.
- ✓ **December 2008** – member of the "Green Party" of Kyrgyzstan and one of the authors of newspaper "Bishkek Reporter" Khabira Mazhieva didn't return from conference held in Sweden after continuous threats, related to publication of article on governmental plans to transfer park lands of "Chon Kemin" into private ownership.
- ✓ **December 2008** – Cholpon Orozobekova editor of newspaper "De-Facto" left for Sweden after accusation on article "Deliberately false denouncement".
- ✓ **March 2009** – Bermet Bukasheva was forced to immigrate to USA after closure of newspaper "Faces", where she was the editor-in-chief.
- ✓ **March 2009** – Syrgak Abdyldaev – columnist of newspaper "Reporter-Bishkek" was beaten later immigrated to Sweden.

The tables below reflect some of the facts of violations of freedom of the media for the period of 2015-2016 and January / February / March / April 2017. All the listed violations and manifestations of violence, that unfortunately took place in Kyrgyzstan, can be called forms of censorship and violations of obligations in the field of media freedom, adopted by the states within the OSCE.

Right of journalists to carry out their professional activities in secure conditions, without fear of being subjected to harassment, attacks, beatings is of exceptional importance for freedom of the press and expression.

[15]Is it safe to work as journalist in Kyrgyzstan? Alisheva N., Lyubeznova N. - Bishkek, 2012. - available at http://www.media.kg.

Cases of attacks, physical violence against journalists

period	brief plot
January 2017	In Bishkek, A.Sartbaev the chief editor of Asia News was beaten at the Bellagio cafe. As K-News was informed by civil activist A. Turdukulov, the journalist was beaten by Deputy Minister of Internal Affairs K. Asanov and the reason for the beating was the professional activity of the journalist: in the latest issue of the publication of Asia News, a collage was published on Asanov. -URL: http://knews.kg/2017/01
February 2017	In Bishkek, unknown people beat A.Musagulov - the chief editor of the newspaper "De Facto". - http://www.vesti.kg/index.php?option
February 2017	The crew of the "Fifth Channel" was subjected to the aggression. From the communication of the "Fifth Channel" it follows that the raid of the state sanitary and epidemiological inspection to one of the flour warehouses in the Eastern industrial zone of Bishkek ended in a serious brawl and with attack on the journalists of the channel. The warehouse staff behaved very aggressively, pushed journalists out of the premises, took away ID of the operator, forbade filming on cell phones, pushed the journalist, tried to take the camera. - http://medialaw.kg/2017/02/09
February 2017	Visitors of one of the cafes in Bishkek during the filming of the plot attacked the employees of the TRC NTS, took away camcorder from A.Zheksheev- the editor of the program "TV Kaiguul" and out of hooligan motives broke it. - http://www.vesti.kg/index.php?option
February 2016	Attack was committed against T. Akimov the chief editor of the newspaper "Money and Power", unknown person struck him several times with armature on the head and disappeared. He reported about it to the news agency "24.kg".– URL: http://24.kg/proisshestvija/28102/
February 2016	Journalist Semetey Talas uulu was attacked. “I was beaten by deputy of Parliament Kamchybek Zholdoshbayev, not by his bodyguards”,- journalist Semetey Talas uulu informed news agency “24.kg”, who was recently attacked by people’s representative. As the victim explained, he didn’t have good relations with parliamentarian before this. “Yesterday my friend asked me to go to market “Besh-Sary” which belongs to K. Zholdoshbayev. When I wanted to drive out the parking on the third floor of the trade center, deputy came up to me, insulted me, threaten and then he started kicking me”,- told Semetey.- URL: http://24.kg/vlast/27921
June 2016	In Bishkek, police officers of the October District Office of Internal Affairs beat up the employee of the Pyramid TV channel A. Zabaluev, robbed him of six thousand KGS and a bank card. This was stated on the official Facebook page of media source. - URL: http://www.24.kg/
September 2016	When conducting a raid action «Adjustment» at the post along Kurmangan Datka street in Bishkek city officer of October District Office of Internal Affairs attacked the correspondent of the editorial office Zanoza.kg**,** who recorded video of the process of conducting event. «Man, who presented himself as an operative, asked me what my name was. I immediately informed him that I’m a journalist, - emphasized the media worker. – Receiving response, that man tried to take away the camera, and then completely, using wrestling techniques, tried to throw correspondent on the ground. But the colleague of correspondent, who ran up in time to help, prevented the incident”. - URL: http://zanoza.kg/344383
January 2015	Journalist Bulat Satarkulov was beaten near his home. Unknown persons attacked journalist, beat him, took his video camera and certificate-accreditation of parliamentary correspondent. – http://www.media.kg/news/obzor-napadenij-na-zhurnalistov-za-2015-god

February 2015	Staff of KSMA used force against journalists of "Azattyk" T. Shambetov and Zh. Zholdoshbaev. Journalists who came to interview rector of KSMA A. Zurdinov on corruption schemes while enrolling students to the university were thrown out of the building of university. The incident was captured on video.- http://www.media.kg/news/obzor
March 2015	Peaceful demonstration (solitary picket) was held near the building of the City Hall of Bishkek by citizen Toktonasyrov O., who demanded resumption of the issue of the municipal newspaper "Bishkek shamy"("Bishkek lamp"). For coverage of the action news agency "Topnews.kg" directed journalist Dzhuskembaev Zh. In the process of video recording officers of City Department of Internal Affairs despite showing correspondent identification by journalist tried to prevent him from covering the event using physical force, accompanying their actions with obscene language against a journalist.- http://www.media.kg/news/obzor-napadenij-na-zhurnalistov-za-2015-god
July 2015	Unknown people stoned the editorial office of the newspaper "Achyk-Sayasat"("Open Policy"). According to law enforcement bodies, attack was committed out of hooligan motives. - http://www.media.kg/news/obzor-napadenij-na-zhurnalistov-za-2015-god
August 2015	On the night of July 31 to August 1 during a joint raid «Press» with special police battalion of the Road Police Patrol I.Kamchybekova correspondent of the news agency «AKIpresss» was attacked by Alybaeva A., passenger of vehicle stopped by officers of SB RPP for speeding and disobeying. Court found Alybaeva A. guilty, she was sentenced to a fine of 150 calculations indices and compensation for moral damages in the amount of 10 000 KGS. - URL: http://internews.kg/?p=8736
October 2015	Journalist of one of the TV channels in Osh city was attacked. Representatives of one of the political parties used force against journalist A. Bolshevikov at the polling station #5144 also they tried to take camera away from him. In the interview to "Turmush.kg"("Wayoflife.kg") Bolshevikov told that first, they used force against the operator. "Then I showed them my identification card, they took it and threw it away. I wanted to film material, I stood up and they started using physical force against me", - journalist said. – http://www.media.kg/news/obzor-napadenij-na-zhurnalistov-za-2015-god
October 2015	On the night of October 22 to October 23 after a special operation to detain A. Itibaev - the escaped prisoner, unknown people took away camcorder of Maksat Orozumbetov and beat him – he is journalist of "Super-Info". – http://www.media.kg/news/obzor

Criminal prosecution

period	brief plot
August 2016	In early August criminal proceedings were initiated against journalist Daiyrbek Orunbekov for failure to comply with Alamedin district court decision, under which journalist is required to pay 2 million KGS to the president A. Atambaev. - http://rus.azattyk.org/a/27977424.html
December 2016	"Interregional strife" was found in verses published on Internet by facebook-poet T. Ormukov. T. Ormukov – the poet with visual disabilities was summoned to the Office of the General Prosecutor for interrogation about the poetry on A. Atambaev published on social media – "Azhoonun oorup

	zhurogu" ("The ruler's heart was aching"), seeing in the art of Ormukov "elements that besmirched honor and dignity of the country's president" and incited interregional strife. Dastan Bekeshev deputy of the Parlaiment from SDPK lodged a complaint with the Prosecutor's Office to take measures against poet. This was first ever case when law enforcement agencies conducted investigative activities regarding verses published on Internet. - URL: http://www.24.kg/obschestvo/42382

Arrests and illegal detentions

period	brief plot
March 2017	On March 18, during the march for political rights and freedom of speech officers of law enforcement agencies detained 5 marchers: Mavlyan Askarbekov, Aibek Myrza, Azamat Attokurov, Rasul Umbetaliev, Muhit Mamytov who were later placed under administrative detention for 5 days. - URL: http://knews.kg/2017/03/
February 2017	On February 26, officers of law enforcement agencies detained Z. Shermamatov and M. Zhorgomov - journalists of TV company "September", also U. Egizbaev - journalist of Radio "Azattyk" ("Freedom"), and M. Soorbekov – employee of website BIA.kg at the airport "Manas" where they were following the developments with regard to the arrest of Omurbek Tekebaev member of the Parliament. As reported by U. Egizbaev on social networks, detained persons were sent to Sokuluk District Department of Internal Affairs. They were released after a while. U. Egizbaev added that Media representatives identified themselves and showed documents identifying them at the airport however were forced aboard a bus and taken to the Department of Internal Affairs. – http://medialaw.kg/2017/02/27/zayavlenie-media-organizatsij-po-sluchayu-zaderzhaniya-zhurnalistov
December 2015	During coverage of peaceful gathering in support of activist Daiyrbek Orunbekov in Bishkek, police detained and took journalists of "Zanoza.kg" – correspondent Marina Skolysheva and operator Ulan Munaimov to the City police station. They wrote explanatory statements after which officers of MIA of KR released journalists.- http://www.media.kg/news/obzor-napadenij-na-zhurnalistov-za-2015-god

Interrogation and searches

period	brief plot
February 2017	Z. Sapanov- journalist of newspaper "De-Facto" was summoned to SCNS (State Committee for National Security) for interrogation. This was reported by editorial office of the newspaper, where he works since December 2016. According to the information, employees of special services searched his home, took his personal computer, cellphone, and books of Sapanov. Last year Sapanov published book "Kydyr sanzhyrasy" (Ancestry of Khidr"), after which representatives of various religious organizations made submissions to the State National Security Committee with request to take action against author. According to author there are no calls or elements instigating strife or casting doubt on religion in his book. - URL: http://rus.azattyk.org/a/28294257.html

March 2016	Journalist of K-News was called in for interrogation to the Office of the General Prosecutor of KR. Purpose of summons of the correspondent N. Tynaeva is unknown. In case of failure to appear Supervisory Authority threatens to apply coerced appearance. The editorial office was called from Office of the General Prosecutor, employee without introducing oneself offered journalist to come and make statements about the video of negotiations of members of the opposition published on website. However, the press-service of the Office of the General Prosecutor explained that correspondent of K-News was called in to give explanations on her article about energy sector.- URL: http://knews.kg/2016/03/29/
June 2016	Journalist Eldiyar Arykbaev was summoned to SCNS of KR and stayed there around two and a half hours. The reason of conversation was the review of material released on Kloop following discussion of LGBT rights on Air in OTRK. One of the local leaders of "patriotic movement" filed complaint against Kloop and OTRK – he was outraged by the content of the broadcast of First national channel and retelling of this discussion in the article. - URL: http://kloop.kg/blog/2016/06/14

Censorship

period	brief plot
January 2017	SCNS warned 11 users of social networks in Jalal-Abad for posts about A. Atambaev. 11 users of social network "Facebook" in Jalal-Abad (Suzak, Bazar-Korgon, Aksy districts) were called in to SCNS and given strict warnings for critical posts in relation to president of the country. This was informed by correspondent of "Azattyk" ("Freedom"). According to these citizens, after that they stopped writing messages in social networks. Representatives of SCNS refused to comment this issue. Earlier media outlets were informing that officers of SCNS of KR identified dozens of "Facebook" users that were posting negative publications concerning president of the country. IP-addresses of these users are outside of the republic. - URl: http://rus.azattyk.org/a/28222926.html
January 2017	SCNS identified 45 users of Facebook "that periodically publish negative publications in relation to Atambaev". Agents of special services are combing through social networks searching negative comments against president of the country A. Atambaev. Deputy of the Parliament, member of the ruling party – I. Karamushkina lodged a petition with SCNS in November 2016 with demand to identify users that unflatteringly speak about head of the state. On December 27, B. Suyumbaev deputy head of special services responded to MP:" With regards to the petition on fact of posting and spreading of negative publications directed at Head of the state by users of social networks, we established 10 social users of web-resource Facebook.com, IP-addresses were identified as from Republic of Belorussia, Turkey, USA, Republic of Kazakhstan, RF, South Korea. Therefore it is impossible to take any measures against them at the moment. Currently, SCNS of KR continues to conduct implementation of relevant activities to identify other 35 social users of web-resource Facebook.com, that periodically place negative publications about Head the state" – described in response of SCNS, posted by one of the users of social networks in Facebook. Earlier ResPublica informed that SCNS and Office of the General Prosecutor started detecting users of social networks that gave uncomplimentary comments about president. However, there was no information on which sanctions will be imposed on them.- URL: http://respub.kg /2017/01/10/ gknb-vyyavil-45-polzovatelej-facebook-kotorye-periodicheski-razmeshhayut-negativnye-publikacii-v-otnoshenii-atambaeva

January 2017	Ministry of Health tried to prohibit doctors from giving information to the press. State Secretary of the Ministry of Health Zh. Kiyizbaeva gave directive on the dissemination of information by doctors. Chairman of the Public Council under Ministry of Health A. Sultangaziev published that document on his page in the social network Facebook. The document instructs heads of departments, sectors and sections of the Ministry of Health, heads of health organizations and medical educational organizations to provide information to the media only prior concordance with the press service on a permanent basis, it is recommended that employees refrain from discussing and commenting on the health system of the Kyrgyz Republic.- URL: http://knews.kg/2017/01/ Later, Minister of Health of the Kyrgyz Republic T. Batyraliev annulled this directive that prohibited doctors from giving journalists comments without coordination and using the Internet.- URL: http://24.kg/obschestvo/43864
June 2016	May 12 after the release of a series of talk show "Oi ordo" ("Headquarters of ideas") on KTRC some citizens held a protest against the editorial policy of the television channel and demanded to ban all media from covering LGBT topics. Also, because of complaint lodged by one of the disgruntled citizens, SCNS called in the staff of KTRC and Kloop to give explanations on this show. Public supervisory council of KTRC recommended discharging the producer of socio-economic innovational programs, the deputy of producer and the program editor. These recommendations were given specifically on the show about LGBT. - URL: http://www.vb.kg/341768
November 2016	Parliamentarians of Kyrgyzstan once again criticized local journalists. So, deputy Kozhobek Ryspaev asked – why does not Jogorku Kenesh (Parliament) call in representatives of the media and sort out issues? He did not like that this or other publications were publishing photos and collages where deputies were sitting on donkeys, sleeping, drinking vodka. At the same time, the "people's deputy" is absolutely sure that the media should be called into parliament and sort out issues.- Details at: http://vesti.kg/

Blocking of websites and broadcasting

period	brief plot
February 2017	TV Channel "September" was disconnected from the digital broadcasting for 4 hours. At 03.00 the second multiplex of digital television was disconnected, at 7.00 it was restored. This was reported by the head of the TV channel "September" Kaiyrgul Urumkanova on her Facebook page. The second multiplex of digital television includes 21 TV channels throughout the country, including oppositional "September". Digital broadcasting was turned off at the same time when opposition leader O. Tekebaev was being detained. "At three o'clock in the morning, when the operation to detain Omurbek Tekebayev began, signal of the channel "September" was lost. But due to the fact that it is included in second multiplex with other 21 channels, they were disconnected too. I think that at seven in the morning the authorities had to resume the signal, because other TV channels have disappeared" - Urumkanova reported this to "Azattyk".- URL: http://zanoza.kg/353129, http://medialaw.kg/2017/02/26
July 2016	Court blocked the website maalymat.kg. By the decision of judicial executors and the Internet provider website maalymat.kg is blocked. Looking back, Alamudun district court issued verdict, according to which journalist D. Orunbekov must pay president Atambaev 2 million KGS for infringement of honor and dignity. In his article devoted to the 2010 June events in the south of the country, he pointed to the guilt of members of the interim government, including the head of the state Atambaev. - URL: http://www.24.kg/obschestvo/34818

Refusal to grant access

period	brief plot
September 2016	Media representatives were not allowed to attend trial on the case of the head of KSMA apparatus. On September 20, in Military court legal proceedings were supposed to start on charges against workers of the SCNS on the fact of death KSMA's rector A.Gaparov. Before the trial, only lawyers were allowed to enter court, and journalists who came there were not allowed to enter the territory. Basis for this was the lack of relevant authorization by the presiding judge of the process.- URL: http://www.vb.kg/347286
September 2016	Journalists weren't allowed to enter the trial on case of prisoners that escaped from Remand Center-50. At the entrance to the Bishkek city court, a police officer said that only persons who are on the list can go to the process, namely lawyers. When asked who banned journalists from entering, security guard said that it was judge. "The process is not closed, but I was told not to let in" – he explained- URL: http://www.24.kg/obschestvo/36907
October 2016	Journalists were not allowed into the courtroom of Bishkek city court, where a criminal case was being considered on charges against the former prosecutor of the Alamudun district of Chui region K. Mamakeev, his assistant M. Donunbaev, and deputy prosecutor of district U. Zhumabekov accused of extortion and taking bribes. Before the meeting, media representatives were not allowed into the hall and were advised to contact the head of chancery of the city court. There, in turn, they stated that they were not responsible for the presence of press in court. Before that court trial was always conducted in open mode.- URL: http://www.24.kg/obschestvo/37888
December 2016	On December 1, President of the Kyrgyz Republic A. Atambaev held final press conference. Journalists of TV channel "September" and newspaper Respublika, who had previously applied for accreditation, were not allowed to attend the press conference.- http://medialaw.kg/2016/12/02
November 2015	Journalist of news agency "24.kg" Darya Podolskaya had her accreditation withdrawn for coverage of the work of the Jogorku Kenesh (Parliament). - http://24.kg/parlament

Ban on filming

period	brief plot
May 2016	In the Sverdlovsk district court it was prohibited to conduct video and photo shooting when hearing case of escape from Remand Center-50. Prosecutor made a motion to withdraw journalists from the courtroom. "Media employees without court permission take pictures of the defendants, lawyers and other participants of the process and then disseminate the photos on Internet. This is unacceptable. I ask that the journalists to be excluded from the trial ", — she explained. Lawyers also supported the position of the state prosecutor. After hearing the opinions of the parties, the judge prohibited journalists to take photos and videos. "This process is open, I can't ban media employees from being at the trial", — noted judge- URL: http://24.kg/obschestvo/31732

April 2016	At the entrance to building of Sverdlovsk district court in Bishkek, police officers took away mobile phones from journalists who filmed defendants of the case of escaping from Remand Center-50 in the street. Correspondents started shooting video when charged offenders were led and put in the car, at this point officers of Ministry of Internal Affairs, cursing, started taking away phones of journalists and bending their arms. Cellphones were returned to media representatives only after the defendants were taken away. MIA weren't able to comment the actions of their workers.- URL: http://24.kg/obschestvo/31260

- **Other**

period	brief plot
May 2017	On Thursday, in the country's parliament there was a call to deprive Ulugbek Babakulov- journalist of Fergana.ru- of Kyrgyzstan's citizenship, informs 24.kg. During the session of the Parliament, some deputies called U. Babakulov "provocateur". They were outraged by his article "People are like beasts". In the Kyrgyz segment of social networks there are calls for reprisals against the "sarts" which was published on our website a week ago. Deputy of the parliament A.Altybaeva has reminded that the word "sart" is considered as insulting. According to her, women in Osh who lost their children in the sad June events are still crying (referring to the ethnic disorders in June 2010. -. Fergana). She believes that law enforcement agencies should pay attention to such articles and give their assessment. However, judging by her words, it is not entirely clear whether the people's deputy read our article or not. "This article can destroy the fragile peace in the south that was created with such difficulty," emphasized Altybaeva. Deputy didn't say anything on what she thinks about open calls for ethnic hatred sounding in social networks that was described in the publication of U. Babakulov. Deputy A.Altybaeva was supported by her colleague M.Madaminov. He said that the society should not ignore such articles, and proposed to deprive U. Babakulov of the citizenship of Kyrgyzstan. "Maybe he is provoking replication of the June events. In general, such people should be deprived of citizenship ", - the deputy is quoted by edition Zanoza. According to the new version of Constitution of Kyrgyzstan, "no citizen can be deprived of citizenship and the right to change his citizenship differently as in the cases and in the order established by the constitutional law". However, mechanism of this procedure is not prescribed by any constitutional law. It should be reminded that on May 27, 2017 in evening news broadcast of the main television channel of Kyrgyzstan 8-minute story was shown under name "Warmongers", in which the journalist of our agency was accused of fomenting ethnic hatred, and the website "Fergana" was called "tendentious" and there was call to block it on the territory of the republic. Two days later, a similar story was released on popular "Channel 5". In parallel, in several publications of the republic, articles were published in the genre of "propaganda attacks," in which calls were voiced to initiate a criminal case against Babakulov. It's worth noting that at the end of March this year the house of our correspondent was put under surveillance. At the same time, threats began to pour on Ulugbek from social networks. According to friends and colleagues of Ulugbek, these attacks are orchestrated by government forces and are caused because of the critical position of journalist and our publication towards the authorities of Kyrgyzstan. Editor-in-chief of Fergana Daniil Kislov is seriously concerned about the course of events. "Everything that happens with Ulugbek, I would call "violence against word" and "authoritative opposition to professional activities of journalist". Unfortunately, today not only Ulugbek and Fergana are being

	bashed in Kyrgyzstan, but also others, perhaps, best journalists and media of the country. Those who do not bow and do not serve authorities or capital. Those who criticize the government and deliver truth to their readers which is painful for Atambaev", — wrote D. Kislov on his Facebook page. - URL: http://www.fergananews.com/news/26460, http://medialaw.kg/2017/06/01/
March 2017	On March 11, official website of President of the Kyrgyz Republic, A. Atambaev, published a statement of the head of state accusing " bunch of supposedly independent journalists, media and politicians" who "are pouring dirt on undesirable people, especially president," trying to "destabilize the situation before presidential elections ". Statement declares that since summer of last year "in some media outlets and social networks campaign of lies, slander and defamation has intensified." It was suggested that "relevant bodies of the country should remind these pseudo-fighters for freedom, that law is mandatory for everyone and not only for nationwide elected President of the country". - http://www.prezident.kg/ru/novosti/9394
January 2017	Media outlets again found themselves to blame for the negative attitude of society towards entry of Kyrgyzstan into the Eurasian Economic Union. Deputy Prime Minister of Kyrgyz Republic Oleg Pankratov said this at a meeting of parliamentary committee on economic and fiscal policy. At the meeting he presented results of Eurasian integration of Kyrgyzstan. Deputies noted that everything was good in the reports of government but in reality it is not so positive. In particular, Deputy Prime Minister was asked to comment on media reports that Kyrgyzstan's meat and dairy products were not allowed into the union- URL: http://24.kg/eaes/42927
January 2016	Uran Botobekov - journalist and public figure left Kyrgyzstan. This was reported to "Azattyk" by his relatives. Botobekov said in his video message that he does not recognize the court's ruling and considers the trial against him as political order. Interview of U.Botobekov on the situation around Publishing House "Evening Bishkek" was published on April 30, 2015. Because of this interview, I.Ilmiyanov, who considered that his honor and dignity had been hurt, sued the journalist. Court ordered Botobekov to pay 1.8 million soms to I.Ilmiyanov.- URL: http://rus.azattyk.org/archive/ky_News_in_Russian_ru/
March 2016	TV host Ernis Kiyazov was discharged from the TV channel NTS. Journalist believes that the reason for his dismissal was his publication in social networks with inconvenient questions to President A. Atambaev. NTS explained that dismissal was made because of changes in staff and ask "not to make politics out of this ". According to journalist, there were no legal grounds to dismiss him. "But this is a private TV channel, where they can fire you without reasoning. There are certain taboos in all media, I seem to have violated them ", – stated journalist. – URL: http://knews.kg/2016/03/15/televedushhego-ernisa-kyyazova-uvolili-s-telekanala-nts

Concluding brief overview of situation in the field of freedom of speech and media freedom, unfortunately, we must highlight worsening of the situation with freedom of speech in Kyrgyzstan in the last months of this year. March and April of this year in Kyrgyzstan were marked by a series of lawsuits against media outlets and journalists (for more details see section 3 - author's note).

2. OVERVIEW OF INTERNATIONAL STANDARDS AND MECHANISMS IN THE FIELD OF OBSERVANCE OF THE RIGHT TO FREEDOM OF SPEECH AND INFORMATION

Concept of right to freedom of expression received universal recognition with formation of the UN and creation of human rights regime, enshrined in international law.[16]

Freedom of opinion and expression are necessary for implementation and use of many other human rights, including freedom of assembly and association, freedom of thought, religion or belief, right to education, right to participate in cultural life, right to vote and all other political rights related to participation in public affairs. Existence of democracy is impossible without them. Freedom of expression and freedom of information are indicators of respect for rights and freedoms in general. It can be said that freedom of expression has a higher status than other rights, since their implementation largely depends on it.

Mass media outlets have a special role in protecting the right to freedom of expression. Free, diverse and independent media are needed in any society to promote and protect freedom of opinion and expression and other human rights. Without freedom of expression and freedom of media an informed, active, and initiative civilian population cannot exist.

Human rights are protected by international law and internal (national) legislation of any state. International legal standards in the area of human rights are binding on all states and their representatives. Let us consider international standards on freedom of expression, freedom of information and freedom of media, as well as review of recommendations of international bodies on their observance.

INTERNATIONAL STANDARDS[17]

Main international acts establishing the standards of the rights considered in this report are the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Universal Declaration of Human Rights, 1948 (UDHR)

Article 19 of the UDHR states: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*. In order to detail the law, the UDHR establishes that this concept includes the right to hold opinions without interference, the right to seek, receive and impart information and ideas through various

[16]Reference and training manual for European countries "Freedom of expression, legislation on the media and defamation", October, 2016. MLDI, IPI - available at https://ipi.media/; - EU Human Rights Guidelines on freedom of expression, offline and online - is available at https://eeas.europa.eu/; - Think before you post; closing down social media space in Kazakhstan. Amnesty International, 2017. – available at https://amnesty.org.ru/pdf.

[17]Materials used:

-Respect and protection of fundamental human rights in the Kyrgyz Republic. Analysis aimed at supporting the compliance of national legislation with constitutional and international human rights obligations - TAC with AUCA. August, 2014 - available at https://www.auca.kg/ru/;

- T. Mendel. Freedom of information: Comparative legal research. 2nd edition, revised and amended / UNESCO: Paris, 2008. - available at http://old.unesco.kz/; - General Comment No. 34. Freedom of opinion and expression. UN Human Rights Committee. (Hundred and Second Session, 2011) - available at https://search.un.org/results.php.

means of communication. The right to freedom of expression is not an absolute right and, therefore, may be limited in certain circumstances. The UDHR specifically lists these circumstances as legal restrictions - it is respect for the rights of others; existence of just requirement of morality; public order and general welfare in society. Additional restriction of this right is one of the basic UN principles[18] as stipulated in the UN Charter. Exercise of this right cannot contradict them.

International Covenant on Civil and Political Rights (ICCPR)

Under Article 19 ICCPR establishes the right to freedom of opinion and expression, and freedom of information. The right to freedom of opinion is an absolute right and its exercise, which must be free from any external interference, cannot be limited. Right to freedom of expression and information may be restricted in certain exceptional circumstances, if provided for by law, with the reservation that these restrictions may not put in jeopardy the very principle of this right.

General Comment #34 of the UN Human Rights Committee is a useful source of recommendation on the interpretation of Article 19 of the ICCPR.

General Comment No. 34 (UNHRC / GC34, 2011):[19]

a) Right to hold opinions without interference

Everyone has the right to hold opinions without interference. This right includes the right to change your opinion at any time and for any reason, if the person at the same time makes a free choice. No person shall be subjected to infringement of any rights on the basis of his actual, perceived or supposed opinions. All forms or attempts to coerce individuals to adhere to or disagree with an opinion are prohibited. Opinions are protected on any issues, including on social, political, scientific, historical, moral or religious issues. States cannot impose any exceptions or restrictions on freedom of opinion, or criminalize commitment to any opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for opinions that they may hold, constitutes a violation of article 19, paragraph 1, of the ICCPR.

b) Right to freedom of expression

Right to seek and impart information

The right to freedom of expression includes the freedom to seek and receive information. This is a key component of democratic governance, since the promotion of decision-making

[18]**Principles of the UN Charter include:**
- Principle of the sovereign equality of states (clause 1, clause 2);
- Conscientious observance by the states of the obligations assumed under the Charter of the United Nations (item 2 of item 2);
- the obligation of peaceful settlement of international disputes (Clause 3, Article 2);
- refusal from the threat or use of force against the territorial integrity and political independence of another or other states (clause 4, clause 2);
-the principle of non-interference in the internal affairs of States (paragraph 7 of Article 2).

Principle of equal rights and self-determination of peoples is included in the UN Charter in the article on purposes of the UN and acts in this regard as a target principle, like the maintenance of international peace and the development and implementation of international cooperation –available at http://www.un.org/ru.

[19]General Comment No. 34. Freedom of opinion and expression. UN Human Rights Committee. (Hundred and Second Session, 2011) - available at https://search.un.org/results.php.

processes involving the public is impossible without sufficient access to information. International human rights bodies noted that the public and individuals have the right to have access to the fullest possible information about the actions and processes of making decisions of their government.

Internet and digital technologies have created new opportunities for individuals and the media to exercise their right to freedom of expression and to have free access to information on Internet. Any restrictions that interfere with information outside of Internet or on Internet must comply with the permissible limits set forth in international human rights law. Taking into account the latest initiatives of the deputies to establish control over publications on the Internet, ensuring implementation of this right is becoming increasingly relevant for Kyrgyzstan.

The right to share any information and ideas through any media outlets
Freedom of opinion also includes the freedom to express and provision of any information and ideas that can be conveyed to others, in any form and through any media. Information or ideas that state authorities or a large part of the public may find critical or contradictory, including ideas or views that may "shock, offend or disturb", are also included in this concept. Comments on own or public affairs, public opinion polling, discussion of human rights, journalism, research, expression of ethnic, cultural, linguistic and religious identity and artistic expression, advertising and teaching are all examples of forms of expression falling under the definition of freedom of expression. Same concept includes political conversations and advertising during electoral campaigning.

Expression can take all forms that include spoken, written and sign language and such non-verbal expression as images and objects of art. All of them are protected. Means of expression include books, newspapers, pamphlets, posters, banners also any forms of audio-visual as well as electronic and internet-based modes of expression.

c) Freedom of expression and the media

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. The Covenant embraces a right whereby the media may receive information because of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.
As a means to protect the rights of media users, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.

States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile-based electronic information dissemination systems, have substantially changed communication

practices around the world. There is now a global network to exchange ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.

d) Limitations on the right to freedom of expression

International and regional conventions, courts and mechanisms in the field of human rights recognize that freedom of expression can be restricted by law in certain, clearly prescribed ways and under certain circumstances. Imposing restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Under paragraph 3 of Article 19 of the ICCPR it is stated that exercise of the right to freedom of expression imposes special duties and special responsibilities. For this reason, two limitative areas of this right are permitted, which are necessary:

- ✓ to respect of the rights or reputations of others ;
- ✓ to the protection of national security or of public order, or of public health or morals.

Restrictions can be established only if the special conditions provided for in paragraph 3 of Article 19 of ICCPR as next:

- ✓ restrictions must be "provided by law",
- ✓ restrictions may be imposed only for purposes for which they were intended,
- ✓ they must be directly connected with specific goal, the achievement of which they pursue, and be proportionate.

Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Paragraph 3 may never be invoked as a justification for the muzzling of anyone. Aggression against a person who exercises right to freedom of expression, including forms of aggression such as arrest, torture, threats to life and murder, is incompatible with article 19 of the Covenant. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. All such cases of aggression should be vigorously investigated in a timely fashion.

Each state is obliged to observe the right to freedom of opinion and expression and to take care that this right is realized in the domestic legislation. Any law restricting the right to freedom of opinion and expression must be carried out by a body that is independent of any political, commercial or other undesirable influence, without self-will or discrimination, with sufficient precautions against abuse, including the possibility of appeal and legal remedies against its unauthorized use.

In addition to UDHR and ICCPR other international instruments state about the protection and promotion of the right to freedom of opinion and expression

- Convention on the Elimination of All Forms of Racial Discrimination (Article 5),
- Convention on the Rights of the Child (Articles 12, 13, 17).

After declaring of independence, the Kyrgyz Republic has joined many international treaties in the field of human rights protection and thereby assumed the obligation to comply with the norms contained therein. Thus, Kyrgyzstan is obliged to report on the measures that were undertaken to implement the recognized rights, for example, in the ICCPR and on the

progress made in the use of these rights (Art. 40 of the ICCPR). Obligation to monitor the implementation of the provisions of the ICCPR is assigned to UN Human Rights Committee.

INTERNATIONAL MECHANISMS

a) Use of international mechanisms by citizens of Kyrgyzstan

Importance of international legal agreements in the overall system of legislation of the Kyrgyz Republic is due to the fact that in accordance with Part 3 of Article 6 of the Constitution of Kyrgyz Republic "*international agreements to which the Kyrgyz Republic is a party, as well as generally recognized principles and norms of international law that have entered into force in accordance with the procedure established by law, form an integral part of the legal system of the Kyrgyz Republic".*

Let us briefly consider the correlation between international norms on human rights and the legislation of Kyrgyzstan. Under Article 6 of the Constitution of Kyrgyz Republic: "*Constitution has the highest legal force and direct effect in Kyrgyz Republic."* Although Constitution of Kyrgyz Republic does not specifically define priority of international treaties over national laws, practically all laws of the Republic contain norms that establish the priority of international law in case of conflict with internal legal norms. In most laws of Kyrgyz Republic, these norms are formulated as follows: if an international treaty establishes other rules than provided by this law, rules of the international treaty are applied. Such setup for prioritized application of the international treaty does not in any way cancel a certain norm in internal law of the state.

The problem of binding nature of international instruments is of practical interest. As for various treaties, conventions, agreements that Kyrgyzstan has joined, signed, ratified everything is clear here. But what should be done with documents of declarative nature?

Strictly from a legal point of view, it could be argued that only the treaty norms that the states have ratified or to which they have acceded impose binding nature. Nevertheless, practical value of non-negotiable norms contained in various declarations, guidelines and rules must be taken into account. This approach is due to three main reasons:

- These documents of non-contractual nature formulate values shared by most legal systems and cultures. Such formulations are contained in domestic law of most legal systems of the world, and they were developed in the course of international process with participation of almost all UN member states;
- Provisions of such documents are considered by many jurists as "general principles of international law", which are one of sources of international law recognized by Statute of the International Court of Justice (Article 38);
- Binding international norms of treaties that must be carried out are sometimes not sufficiently detailed so that states can properly interpret or determine the consequences of their implementation (i.e. execution). Therefore, the more specific concepts are contained in the guidelines and principles that serve as an important legal addition for states seeking to implement international norms at the national level.

There are no obstacles for application of the provisions of declarative documents in the Kyrgyz legislation. In accordance with constitutional norm on the correlation between international and domestic law (Part 3, Article 6 of Constitution of the Kyrgyz Republic), apart from treaties, generally recognized principles and norms of international law form an integral part of legal system of the Kyrgyz Republic. Those are the principles and norms that are officially recognized by all or nearly all states as mandatory.

When human rights are violated, judicial authorities are effective as mechanism for the protection of rights. But what if person believes that his rights are violated, but he could not get protection in national courts of the country? In this case, there is an opportunity to appeal to the UN Human Rights Committee. For example, Kyrgyzstan is a member of Optional Protocol to the ICCPR since January 7, 1995. That means that individuals under the jurisdiction of Kyrgyzstan have opportunity to lodge individual communications (complaints) to the UN Human Rights Committee. According to Part 2 of Article 41 of Constitution of the Kyrgyz Republic "everyone has the right, in accordance with international treaties, to appeal to international human rights bodies for the protection of violated rights and freedoms".

Unfortunately, on December 11, 2016 the referendum excluded constitutional norm out of Article 41 of Constitution of the Kyrgyz Republic that enshrines the legal obligation of state to implement the decisions of international human rights bodies, including UN Human Rights Committee. This norm was introduced into Constitution of the Kyrgyz Republic in 2010 which stopped disputes about whether the decisions of the UN treaty bodies on human rights are binding for Kyrgyzstan, or whether the issue of their implementation and non-fulfillment should be left to the discretion of state. This provision of Constitution of the Kyrgyz Republic imposed on authorities of the country duty to develop a mechanism for implementation of decisions of the UN treaty-based bodies on human rights and ensure its effective functioning. But the mechanism of legal regulation of this process was never developed and on December 11, 2016 this norm was completely excluded from the Constitution of Kyrgyz Republic and now question arises whether it is obligatory to implement the decisions of the UN treaty bodies on human rights or not? We believe that Kyrgyzstan by voluntarily recognizing jurisdiction of UN Human Rights Committee does not have the right to ignore opinion of Committee and is obliged to implement its decisions. This provision is based on principle of international law "pacta sunt servanda", according to which each existing treaty is binding on its participants and must be implemented in good faith by all parties (Article 26 of Convention on the law of treaties).

b) Recommendations of international bodies in relation to Kyrgyzstan [20]

Ratification of the majority of existing human rights treaties and ensuring their direct application in framework of national legislation is the responsibility of state, as well as the necessary measure for compliance and fulfillment of its obligations.
Kyrgyzstan is a state party to seven of the nine core UN human rights treaties and six of the nine optional protocols to them. Each treaty establishes its period for submission of periodic reports by each State party, which are different and range from 2 to 5 years. Reporting every 2 years is provided, for example, in International Convention on the Elimination of All Forms of Racial Discrimination, or every 5 years - in International Covenant on Economic, Social

[20]Collection of recommendations of UN human rights mechanisms for the Kyrgyz Republic, 2010-2015. Prepared by the Tien-Shan Analytical Center at AUCA with the support of the UNHCR Regional Office in Central Asia. - Bishkek, 2015. - available at https://www.auca.kg/ru.

and Cultural Rights. Consideration of reports is assigned to Committees (treaty bodies) monitoring the implementation of treaty by the states. Alongside with reports of the Member States, the UN Committees consider alternative reports submitted by international and non-profit organizations.[21]

In the period from 2010 to 2015, (inclusive)[22] seven UN Treaty bodies [23] of which KR is a party and Subcommittee on Prevention of Torture [24] conducted a review of human rights violation cases in Kyrgyzstan. Also within the framework of the UN charter-based bodies, Human Rights Council held the first and second cycles of the Universal Periodic Review (UPR) of Kyrgyzstan. In addition, during reporting period country was visited by four Special Rapporteurs.[25]

As mentioned above, freedom of expression is closely related to other rights, including freedom of association, freedom of peaceful assembly, and belongs to all people and groups in Kyrgyzstan. Restrictions on this right can only be introduced in special rare cases, including obligations related to respecting the rights and reputation of others. It is therefore not surprising that UN Human Rights Mechanisms issued 20 recommendations covering issues of legislation, justice, the situation of human rights defenders, journalists and the media, NGOs, LGBT, minorities, women and children over the period 2010-2015.

Special attention was paid to ensuring that legal and regulatory framework guaranteed the right to freedom of expression without any unlawful limitations.

Number of Recommendations 2010-2015.[26]

UPR	CEDAW	CERD	ICCPR	UNSRVAW	SRSCCPCP
8	**1**	**4**	**4**	**2**	**1**

[21]Freedom of religion and belief in Kyrgyzstan. Promoting interfaith consent and ensuring the rule of law / Ed. D.Kabak. - Bishkek: 2015 - available at http://www.osce.org/ru/odihr/.
[22]In 2016, Kyrgyzstan did not submit any reports (note by the author).
[23]The seven major UN human rights treaties, the implementation of which is monitored by the respective Committees of the UN Treaty Bodies:
- International covenant on civil and political rights (ICCPR),
- International covenant on economic, social and cultural rights (ICESCR),
- Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT),
- Convention on the elimination of all forms of discrimination against women (CEDAW),
- Convention on the rights of the child (CRC),
- International Convention on the elimination of all forms of racial discrimination (CERD)
- International convention on the protection of the rights of all migrant workers and members of their families (IGM).
[24] SPT was established on the basis of the provisions of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[25]Four Special Rapporteurs (SR):
-Special Rapporteur on the sale of children, child prostitution and child pornography (SRSCCPCP),
-Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment (SRCIDT),
- Special Rapporteur on violence against women, its causes and consequences (SRVAW),
- Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (SRTW).
[26]Collection of recommendations of UN human rights mechanisms for the Kyrgyz Republic, 2010-2015. Prepared by the Tien-Shan Analytical Center at AUCA with the support of the UNHCR Regional Office in Central Asia. - Bishkek, 2015.

Matrix of recommendations from international bodies 2013-2015.[27]

year	human rights mechanisms	recommendations
2015	UPR	5.102. To ensure adequate legislative guarantees for exercising of the rights to freedom of expression and association of all individuals, including human rights defenders and journalists
2015	UPR	5.104. To ensure that any legislative act on NGOs fully complies with international human rights law, including freedom of expression and freedom of association
2015	UPR	5.106. To ensure, within the framework of its legislation, protection of the rights of everyone, regardless of their sexual orientation and gender identity, minority status or any other sign, freedom of expression and assembly, freedom from discrimination and equality before the law
2015	UPR	5.107. To ensure respect for freedom of expression, freedom of the press and freedom of association
2015	UPR	5.109. To ensure that in legislation and in practice journalists and others freely exercise their right to freedom of expression
2015	UPR	5.110. To ensure prompt investigation of attacks against journalists and prosecution of perpetrators, as recommended by the results of the first cycle
2015	UPR	5.111. To ensure freedom of expression, association, and peaceful assembly for journalists, activists, human rights defenders and demonstrators
2015	UPR	5.112. To ensure that all journalists, human rights defenders and other members of civil society are able to collect, receive and impart information and conduct their legitimate peaceful activities without any obstacles, intimidation, harassment or pressure
2015	CEDAW	16. (c) Usage of innovative media-oriented measures to achieve a deeper understanding of real equality between men and women, and use the education system to create a positive image of women free of stereotypes

[27]Collection of recommendations of UN human rights mechanisms for the Kyrgyz Republic, 2010-2015. Prepared by the Tien-Shan Analytical Center at AUCA with the support of the UNHCR Regional Office in Central Asia. - Bishkek, 2015.

2014	ICCPR	24. The State party should ensure that journalists, human rights defenders and others are free to exercise their right to freedom of expression in accordance with article 19 of the Covenant and the Committee's general comment No. 34 (2011) on freedom of opinion and expression
2014	ICCPR	24. Furthermore, the State party should ensure that threats, intimidation and violence against human rights defenders and journalists are investigated so that perpetrators are held accountable and if found guilty, punished and that compensation is provided to the victims.
2014	ICCPR	24. The State party should also ensure that all individuals or organizations are free to report to the Committee and should protect them from any reprisals for providing such information
2014	ICCPR	27. The State party should intensify its efforts to ensure representation of minorities in political and public bodies at all levels, including judicial and law enforcement bodies, to promote education in minority languages for children belonging to ethnic minority groups and to encourage use of minority languages in the media, including by re-creating TV channels that broadcast in Uzbek language
2013	CERD	13. The Committee also recommends that journalists to be made aware of human rights issues, including the prohibition of incitement to racial discrimination
2013	CERD	14. The Committee recommends the State party to strengthen its efforts, in particular through educational, cultural and awareness-raising campaigns in order to combat racial stereotypes, discriminatory attitudes, nationalistic statements, including in the media, in order to promote reconciliation, tolerance and mutual understanding, and to form a peaceful and open society. The Committee requests the State party to provide it with information on specific results of such measures in its next periodic report
2013	CERD	18. The Committee recommends the State party to strongly condemn statements of a discriminatory nature and misanthropic statements by politicians and the media. The Committee recommends the State party to take relevant measures to investigate, prosecute, and punish such acts and take appropriate measures to prevent them, including through outreach activities with the media

3. ANALYSIS OF NATIONAL LEGISLATION AND LAW ENFORCEMENT PRACTICE ON THE OBSERVANCE OF RIGHT TO FREEDOM OF SPEECH AND INFORMATION[28]

Protection and promotion of freedom of opinion and expression are recognized within the framework of international law and must be recognized under national laws of states. In this section, we will examine how Kyrgyzstan, as a state party to the ICCPR, guarantees freedom of expression, information and freedom of the media.

3.1. CONSTITUTION GUARANTEES

Review of legislation and problem description

Under Article 6 of the Constitution of KR: Constitution has supreme legal force and direct effect in the Kyrgyz Republic, constitutional laws, laws and other normative legal acts are adopted only on the basis of Constitution of the Kyrgyz Republic.

Before proceeding to an analysis of rights that are the subject of this report, let us consider what are general constitutional guarantees regarding human rights and freedoms in the Kyrgyz Republic. Human rights and freedoms in Kyrgyzstan are inalienable and belong to every individual from birth (Part 1, Article 16 of Constitution of the Kyrgyz Republic). Kyrgyz Republic respects and guarantees the human rights and freedoms of all persons within its territory and jurisdiction. (Part 2, Article 16 of Constitution of the Kyrgyz Republic). Since ensuring of rights and freedoms must be exercised through guarantees, question arises as to how clearly the guarantees were reflected in the constitutional norms?

In Constitution of the Kyrgyz Republic, rights and freedoms are laid down in different formulations, as in constitutions of other states. Some rights are embodied declaratively ("everyone has the right to ..."), others - as a guarantee ("freedom is guaranteed ..."). It can be said that difference in formulations should not diminish recognition of certain citizens' rights since Constitution has a direct effect, and enshrinement of a right in itself is a certain guarantee, but the word "guaranteed" still means that the state has a system capable of securing this or that right. In Constitution of the Kyrgyz Republic, in most cases the wording "everyone has the right to ..." is used i.e. the State recognizes right, but does not claim that the state guarantees its provision/implementation. For example, if you look at section 2 of Constitution of the Kyrgyz Republic "Rights and freedoms of individuals and citizens," the wording "guarantees/guaranteed" is found only in 7 articles [29] out of 44, included in the

[28]Used materials:
- Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg; - Report on state of legislation on media in the Kyrgyz Republic - available at http://medialaw.asia/document/-633; - Analysis of legislation on mass media of the Republic of Kazakhstan 2007-2010. - available at http://medialaw.asia/node/10354; - On status of media in Kyrgyzstan. K. Mambetaliev - available at http://www.monitoring.kg/?pid=10; - Respect and protection of fundamental human rights in the Kyrgyz Republic. Analysis was aimed at supporting the compliance of national legislation with constitutional and international human rights obligations - Tien-Shan Analytical Center at AUCA. August, 2014 - available on https://www.auca.kg/ru/tspcreports.

[29]Constitution of KR:

specified section. Every right can only be exercised, when there's someone's duty/guarantee in line with it.

Part 1 of Article 20 of Constitution of the Kyrgyz Republic states that in the Kyrgyz Republic laws should not be adopted that cancel or diminish the rights and freedoms of individuals and citizens. It would seem that this is a prohibitive norm and it would be so in law-based State, but the phrase "should not" in the context of legislative initiatives and the realities of Kyrgyzstan and with constant attempts of certain groups of individuals to get around the constitutional norms does not mean a direct and categorical prohibition to overt act. Acting under the principle that "everything that is not prohibited by Constitution and law is allowed" (Article 18 of Constitution of the Kyrgyz Republic) and taking into account the events taking place in Kyrgyzstan during recent years, initiation of such law by some interested parties is entirely possible.

Constitution of KR recognizes every individual's:

- ✓ right to freedom of thought and opinion (part 1, article 31);
- ✓ right to freedom of expression, freedom of speech and the press (part 2 article 31);
- ✓ right freely to seek, receive, store and use information and distribute it orally, in writing or by other means (part 1 article 33);
- ✓ right to acquaint themselves with information concerning them held by central or local government bodies, institutions and organizations (part 2 article 33);
- ✓ right to obtain information on the activities of central and local government bodies and their officials, companies that have central or local government involvement, and organizations that are financed from the national or local budgets. (part 3 article 33);

as well as:

- ✓ guarantees access to information held by state bodies, local governments and their officials. Procedure for providing information shall be determined by law (part 4 article 33);
- ✓ imposes ban on forcing someone to express or renounce his or her opinions (part 3 article 31 of Constitution).

In the previous sections of this report, it was stated that no restriction is allowed on the right to freedom of opinion, while the right to freedom of expression and freedom of information is not absolute and limitations are possible. Safeguards for prohibition of restrictions on the right to freedom of opinions/beliefs are also contained in Constitution of the Kyrgyz Republic (Parts 4 and 5 of Article 20):

Article 29 part 4. Everyone is guaranteed protection, including judicial protection, from improper collection, storage, dissemination of confidential information and information about a person's private life, and the right to compensation for material and moral harm caused by unlawful actions is also guaranteed.
Article 32 part 1 Everyone is guaranteed freedom of conscience and religion.
Article 33 part 4. Everyone is guaranteed access to information held by state bodies, local governments and their officials. The procedure for providing information shall be determined by law.
Article 40 part 1. Everyone is guaranteed judicial protection of his rights and freedoms provided for by this Constitution, laws, international treaties to which the Kyrgyz Republic is a party, generally recognized principles and norms of international law.
Article 49 part 1. Everyone is guaranteed freedom of literary, artistic, scientific, technical and other forms of creativity, teaching.
Article 50 part 5. Kyrgyz Republic guarantees its citizens protection and protection outside of its borders.
Article 53 part 1. Citizens are guaranteed social security in old age, in case of sickness and disability, loss of the breadwinner in cases and in the manner prescribed by law.

- ✓ safeguards of ban on forcing to express opinions, religious and other beliefs or renounce them are no subject to any limitations established by Constitution of KR (see clause 7, part 4, article 20));
- ✓ right to freedom of thought and opinion, to freely choose and have religious and other beliefs is not subject to any restriction (see clause 4, article 20).

In cases of necessity of limitation of human and civil rights and freedoms in Kyrgyzstan, Constitution of the Kyrgyz Republic provides certain conditions for mandatory observance, namely: human and civil rights and freedoms may be restricted by the Constitution of Kyrgyz Republic and laws for the purpose of protecting (Part 2, Article 20):

- ✓ national security,
- ✓ public order,
- ✓ public health and morals,
- ✓ the rights and freedoms of others.

At the same restrictions must:

- ✓ commensurate with these purposes (part 2 article 20 of Constitution of the KR),
- ✓ not be imposed for other purposes (part 3 article 20 of Constitution of the KR),
- ✓ not be imposed to a greater extent than stipulated by Constitution of the KR (part 3 article 20).

In the Constitution of the KR there is no norm prohibiting censorship.[30] Previously, there was norm on prohibition of censorship in Article 16 of Constitution of the Kyrgyz Republic of 2003 edition. Currently, this norm is included into provisions of specific (special) legislation - Law of the Kyrgyz Republic "On the mass media" (Article 1), Law of the Kyrgyz Republic "On protection of professional activities of journalists" (Article 4), Law of the Kyrgyz Republic "On television and radio broadcasting "(Art. 5). In our opinion, existence of a constitutional norm guaranteeing the prohibition of censorship would be more significant and more effective in terms of safeguards. In the opinion of media experts, "relevant imperative would not only serve as a basis for the whole legislative array, but would also ensure stability and inviolability of this principle, following the relevant characteristic of the Fundamental Law (stability)".[31] Unfortunately, today situation in Kyrgyzstan is far from cloudless - constitutional and legislative safeguards are often not observed. From year to year problem of freedom of speech, freedom of expression is becoming more acute in Kyrgyzstan. Increasing attempts to bring journalists and the media to civil liability is also evidence of that (for example, lodging of a "multi-million" lawsuits against various media on defending honor and dignity during a short time "February-April" in 2017). In Section 1 of this report, cases of pressure on journalists were considered, which were in forms of attacks, injuries to health, restrictions against journalists from performing professional duties, blocking of websites, etc. All violations of media rights and violence against journalists that unfortunately occurred in Kyrgyzstan can be called forms of censorship. Journalists cannot feel safe, a culture of fear arises, the direct result of which is self-censorship that prevents the dissemination of

[30]For example, the constitutions of Russia and Kazakhstan prohibit censorship:
-Part 5 of Article 29 of the Constitution of Russian Federation "Freedom of mass information is guaranteed. Censorship is prohibited ";
-Part 1 of Article 20 of the Constitution of Republic of Kazakhstan "Freedom of speech and creativity is guaranteed. Censorship is prohibited ".

[31]Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

important information. And this has a direct impact not only on the media, but on the whole society.

Law Enforcement Practice

Let us consider one example, how the above mentioned constitutional guarantees operate in reality. Freedom of opinion and freedom of expression are indicators of the observance of rights and freedoms in society. The Constitution of the Kyrgyz Republic guarantees citizens of Kyrgyzstan the right to have their opinion and express it in any form not prohibited by law.

According to Article 34 of the Constitution of the Kyrgyz Republic "*everyone has the right to freedom of peaceful assembly ... Everyone has the right to submit a notification to the authorities in order to ensure the holding of a peaceful assembly*." Further, the constitutional norm clarifies that "*prohibition and restriction of the holding of a peaceful assembly, as well as denial of its proper security, is not permitted due to the absence of notification of the holding of a peaceful assembly, failure to comply with the form of notice, its content and timing of filing*." That is, according to the meaning of the article of the Constitution of KR, the holding of peaceful assemblies is possible without prior notification and the state authorities cannot prohibit or impede their conduct. Despite of this, the Law of the Kyrgyz Republic "On Peaceful Assembly" requires the organizers of the peaceful assembly to give preliminary notice to the local authorities. And, as practice shows, local authorities can, under any pretext, impede the holding of a peaceful assembly, which is already a violation of these constitutional norms.

Thus in March of this year, civil activists decided to hold a march "For political rights and freedom of speech". By this action, the organizers and participants wanted to express their opinion on the cases of authorities' pressure on the freedom of speech, which took place recently in Kyrgyzstan. On March 10, organizers of the march, in accordance with the requirements of Article 11 of the Law of the Kyrgyz Republic "On Peaceful Assemblies", were notified the state bodies on the conduct of a peaceful procession with an indication of the date, time, place, route, etc. By ten o'clock on March 18, participants of the event and law enforcement officers began to gather in the appointed place. After a while, the march participants, accompanied by the Department of Interior officers, moved towards the city center. However, almost at the end of the route, law enforcement officers with the use of force detained 5 participants of this march. The reason was that some of the participants went to the roadway. On the same day, the court detained those who violated the requirements of the Code on Administrative Liability of KR[32] were brought to administrative liability [33] and subjected to administrative arrest for a period of 5 days.

[32]The articles of CoAL KR, violated by the court during the consideration of administrative cases in respect of marchers:
Article 551 - Open examination of the case of an administrative offense;
Article 563 - Administrative detention;
Article 570 - Rights and obligations of the offender;
Article 572 - Defender, representative, lawyer;
Article 591 - Announcement of the decision on the case and delivery of its copy.

[33]Articles of the CoAL KR KR, for violation of which the marchers were brought to administrative responsibility:
Article 231-1 - Illegal road blocking;
Article 364 - Minor hooliganism;
Article 371 - Disobedience to the lawful order or demand of an employee of the internal affairs bodies and other persons performing duties for the protection of public order.

In the case described, there is a violation of the constitutional norm, despite the observance of the legislation norms by organizers and participants of the march:

- The organizers of the action decided to express their opinion on disagreement with the actions of the authorities by holding a peaceful demonstration/march.
- The organizers of the action met all the norms of the current legislation to ensure the implementation of the planned action.
- Representatives of the authorities represented by law enforcement agencies were supposed to carry out measures to ensure the conduct of this action.
- The Law of the Kyrgyz Republic "On Peaceful Assembly" regulates the actions of law enforcement officers. Thus, according to Article 13 of the Law "in the event of persons' identification who violate public order, commit or incite to commit unlawful acts that impede the attainment of the objectives of a peaceful assembly, the law enforcement bodies must take the necessary measures with respect to these persons in accordance with the legislation without ending the peaceful assembly". At the same time, according to sub-item 6 p. 1 of Article 6 of the Law, before taking any measures against violators, Department of Interior officers should demand the cessation of illegal actions and only in case of non-fulfillment of legal requirements to apply coercive measures provided by legislation. However, as the observers of the action noted, there were no warnings on the part of DI officers about stopping any unlawful actions.
- The actions of law enforcement agencies representing the authorities in this case can be regarded, not only as an attempt to impede the holding of a peaceful assembly, but also **as an attempt to illegally restrict the right of marchers to freedom of expression.**

It should be noted that the authorities' actions to restrict freedom of speech and prosecution of independent media, which took place before the above-mentioned case, caused public discontent. In this situation, the Leninsky District Court of Bishkek by its decision of March 17, 2017 banned any meetings from March 20 to April 8 this year. Common reasons for such prohibitions are usually formal reasons, such as: "*can cause anxiety and discontent among citizens and guests of the capital"; "Can create destabilization in society"; "can create blockade"; "the ban is connected with the arrival of foreign delegations or holding and preparing for the holidays and the nomad games* ", etc.

Holding any peaceful assembly/demonstration pursues the goal of expressing an opinion publicly on a particular issue. Consequently, in the context of ensuring the right of citizens to freedom of opinion and freedom of expression (Article 31 of the Constitution of the Kyrgyz Republic), restriction can be imposed only in compliance with certain conditions and in strict accordance with the provisions of Article 20 of the Constitution.

3.2. LEGISLATIVE REGULATION OF FREEDOM OF WORD AND INFORMATION

Review of legislation and description of the problem

During the years of independence, a legislative base for the development of the mass media has been created in Kyrgyzstan. The basis of legal regulation of mass media activities is both general laws - the Constitution of the Kyrgyz Republic, codes - civil, criminal, etc., and special legal acts directly related to the activities of the mass media - laws on media, television, advertising, etc. And also those NRAs that do not have mass media directly subject

to regulation, but, nevertheless, affect issues that affect the basics of their activities. For example, the laws of the Kyrgyz Republic on the state registration of legal entities, branches, representative offices, "On the State of Emergency", "On the Protection of State Secrets of the Kyrgyz Republic", "On Licensing and Permission System of the Kyrgyz Republic, "On Copyright and Related Rights", "On Informatization and Electronic Management", "On Personal Information" and others.

Among the normative legal acts directly regulating the activities of the mass media and journalists can be identified the following:

- The Law of the Kyrgyz Republic "On Mass Media", 1992,
- The Law of the Kyrgyz Republic "On Television and Radio Broadcasting", 2008,
- The Law of the Kyrgyz Republic "On Protection of Professional Activities of Journalists", 1997,
- The Law of the Kyrgyz Republic "On Guarantees and Freedom of Access to Information", 1997,
- The Law of the Kyrgyz Republic "On Access to Information under the Jurisdiction of State Bodies and Local Self-government Bodies of the Kyrgyz Republic", 2006.

The first law regulating the media field was, and still is, the Law of the Kyrgyz Republic "On the Mass Media", adopted on July 2, 1992. The law determines the general legal, economic and social basis for organizing communications through the media, directed at the free functioning of the media, regulates their relations with state bodies, public associations, enterprises, organizations and citizens. For a long time, this law was the only legal act by which the print and electronic media worked. At the stage of formation of the national legislation on mass media, the law played an indisputable role in the development of the press and television and radio broadcasting. The norms of the law apply to the activities of all types of media (printed and electronic), but the provisions relating to print media are prevailing in the law.[34] Law on Mass Media of the Kyrgyz Republic has not undergone any significant changes for the years of its existence.

Subsequently, in Kyrgyzstan, a number of other laws and regulations supplementing the law on the media, including those related to the technical side of television and radio broadcasting, to obtaining licenses, etc. were adopted. Thus, on December 5, 1997, the Kyrgyz Republic adopted the Law of the Kyrgyz Republic "On Protection of Professional Activities of a Journalist" and the Law of the Kyrgyz Republic "On Guarantees and Freedom of Access to Information". Both laws were adopted on the same day and were initiated as an addition to the law on mass media.

Let us consider some aspects of the legislative regulation of freedom of speech and information laid down in the above legal acts. We must immediately make a reservation that we are not faced with the task of an expanded legal analysis of the current legislation in the field of media in Kyrgyzstan, we will dwell on some provisions of the NRAs, as well as the existing gaps.

- **The Law of the KR "On Mass Media"**

[34]Legal environment for the development and activities of the media in the Kyrgyz Republic. Alagushev A., Alisheva N. - Bishkek, 2010. - available on http://www.media.kg.

The first thing, on what attention is immediately emphasized when acquainting with the provisions of the law is the lack of a conceptual apparatus and the vague formulations of certain norms of the law. The absence of definitions or a conceptual apparatus, as well as inaccurate language of the provisions of the law, greatly hamper the correct application of its norms.

For example, **article 2 of the Law states** "The mass media are represented by its bodies and citizens, who are leading the public dissemination of communications. The bodies of mass media are legal entities acting on the basis of their charter. "

Who is the body of the media - the founder, owner, publisher or editorial office? It is necessary to clarify what the legislator puts into the notion of "editorial" or "publisher", etc.

It is necessary to revise and clarify the list of mass media, which is contained in article 1 of the Law, as some of them do not fall under the requirements for the mass media, for example "book".

Also revision and clarification of the provisions are required provided for in **Article 5 of the law** (containing a list of who has the right to establish a media), because some of the concepts included in the text of the law in the 1992 edition have acquired a slightly different meaning at the present time (for example., “public associations” see the link).[35]

Law requires mass media outlet to be registered in an authorized state agency (**Article 6** of Law). Unreasonable refusal to register a mass media or its delay can be appealed in a court. At the same time, the law does not specify specific grounds that allow the authorized body to refuse registration of the media. In our opinion, this gap in the law allows the state agency that conducts registration to arbitrarily decide the fate of a particular media.

Article 8 of the Law regulates the procedure for suspending or terminating the activities of the media. Again, the article does not contain a list of specific grounds and conditions, in the event of which it is possible to initiate a procedure for suspending or terminating the activities of the media.

Article 15 of the Law is ambiguously stated. In the title of the article, the legislator lays down the right of the mass media to information (obtaining information) from state bodies, public associations and officials. Norms of the article are set forth as regulation of rights not for the media, but for state bodies, public associations and officials to provide such information. It means the article lays down the right of the state body, and not its

Article 15. The right of mass media bodies to receive information
"State bodies, public associations and officials have the right to present available information at the request of mass media, create conditions for familiarization with the relevant documents"

[35]For example: according to the Law of the Kyrgyz Republic "On mass media", the founders of media can be "public associations". Let's look at wording of the concept of "public associations":
-in the Law of the Kyrgyz Republic "On Public Associations", 1991: Art. 1. "The concept of public association. A voluntary association is a voluntary formation that arose as a result of the free expression of the will of citizens of the Kyrgyz Republic, united on the basis of common interests, goals and principles of activity. Public associations are political parties, mass movements, trade unions, women's, veteran organizations, organizations of disabled people, youth and children's organizations, scientific, technical, cultural, educational, sports and other voluntary societies, creative unions, associations, foundations, associations and Other associations of citizens ";
-in the Law of the Kyrgyz Republic "On non-profit organizations", 1999: Article 2 "Public association - voluntary association of citizens, united on the basis of their common interests to meet spiritual and other non-material needs.".

obligation to provide information in order to ensure the implementation of the right of the media to information, although the mass media is the subject of regulation of this law.

Article 16 of the Law raises questions.
Again, the question arises on the need to introduce into the law a conceptual apparatus, since based on the meaning of this article, neither the editorial board nor the founders are media bodies. In addition, the article introduces a new concept of "mass media bodies".

Article 18 of the Law requires clarification or introduction of reference norms. The Institute for the protection of information sources is based on the constitutional right to secrecy of correspondence, telephone and other negotiations, postal, telegraphic and other communications (Article 29 of the Constitution of the Kyrgyz Republic). The exception is cases where the requirement to disclose the source of information came from the judiciary. But in this case, in order to ensure the right of the person who provided information for non-disclosure of his name, it is necessary to provide guarantees that his name will not become public in the court. The protection of the mass media sources is as important as guarantee of the mass media freedom and prohibition of censorship.

Article 18. Cases of non-disclosure of information
"The body of mass media has no right:
- to name the person who provided information with the condition of non-disclosure of his name, except for cases when the court requires it ……..”

Article 23 of the Law contains a list of information which is not subject to public dissemination, among which the mass media is not allowed
- an insult against the civil honor of the people (paragraph "g"),
- distribution of materials that violate the norms of civil and national ethics (clause "h").
Perhaps the idea of such a ban, by itself, is not bad, but the question arises about the practical implementation of this rule: which body, using what criteria, determined all this time (if such cases arose), does any material published in the media violate listed prohibitions? And what are the concepts of "civil honor of peoples" or "civil and national ethics"? After all, in order not to violate the ban, you need a clear legal regulation of a particular concept.

The law on mass media does not decipher what **"censorship"** is, what actions constitute censorship and which can threaten freedom of speech (**Article 1 of the Law**). The interpretation of what the legislator puts into this term can be based on the provisions of two other laws - "On Television and Radio Broadcasting" and "On the Protection of Professional Activities of a Journalist". In the opinion of media experts, the current definition problem of “censorship" concept is dispersion of norms, operation of a part of the rules only in relation to individual institutions of the journalistic job (television journalism, public television), lack of accountability measures. In addition, even the complex and multidimensional definition of censorship that exists in legislation does not fully protect the media from the risks that constitute the essence of this social phenomenon."[36] Media experts believe that [37], "censorship should be understood not only as the possibility of direct pressure to prevent the information dissemination, but also indirect influence on the media in order to correct their substantive work. This should be recognized as interaction in various forms, including

[36]Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.
[37]See: Ibid.

- ✓ acts of unlawful nationalization or other types of the mass media assets transfer,
- ✓ the imposition of unreasonably inflated compensations in cases of protection of honor, dignity and business reputation,
- ✓ introduction of restrictions on the markets where the mass media operate (subscription market for print media, advertising market, etc.),
- ✓ preventing the information dissemination of already entered into civil circulation,
- ✓ the use of force actions against journalists or the expression of threats directed at them to restrict the performance of their professional duty,
- ✓ raider seizures of the media.

The list of administrative mechanisms and ways to affect mass media that could be applied to influence on their editorial policy could be vary broadly, and inevitably will be supplemented by new variations.

It would be logical to introduce clearly defined notion of "censorship" into the main legal and normative act in the field of mass media, which is the law of the KR "On mass media". And if needed to duplicate this notion in all other legal acts.

- ➢ **The Law of the Kyrgyz Republic "On protection of professional activity of a journalist"**

The law, adopted in 1997, is still valid in the current state, i.e. no changes and additions were made to the law within 20 years. The law contains 16 articles and regulates the relations arising in connection with the professional activity of a journalist, determines his rights and duties, provides legal and social guarantees, establishes measures of responsibility for violation of legislation on the protection of professional activities of a journalist. It can rightly be considered as an addition to the Law of the Kyrgyz Republic "On Mass Media", in particular to Chapter IV "Rights and Obligations of a Journalist".

Given the content of this law, it is not entirely clear why the law was adopted in the form of a separate legal act, it would be more logical to supplement with new provisions and expand the chapter "Rights and Obligations of a Journalist" in the Law of the Kyrgyz Republic "On Mass Media".

The law defines the notion of "journalist", the definition of "journalist" is also contained in the Law of the Kyrgyz Republic "On the Mass Media". In this law, as in the Law of the Kyrgyz Republic "On Mass Media", the rights and duties of journalists are prescribed, but in a more extended format.

The law for the first time legislatively provides for guarantees for the professional activities of a journalist (Article 8 of the Law). The law stipulates the status of a foreign journalist (articles 11 and 12 of the Law).

Practice shows that despite the positive aspects of the Law of the Kyrgyz Republic "On the protection of professional activity of a journalist", it did not receive active practical application. This is indirectly evidenced by the fact that for 20 years of the law existence and in the conditions of a changing media space, there was no need to improve the provisions of the law and make any additions to it.

- **Law of the Kyrgyz Republic "On Television and Radio Broadcasting"**

Prior to the adoption of the Law of Kyrgyz Republic "On Television and Radio Broadcasting" in 2008, relations in the sphere of television and radio broadcasting on the territory of the Kyrgyz Republic were regulated mainly by the law on mass media. Media experts identified several aspects of the Law on TRB, the regulation of which does not fully solve the tasks facing the industry:[38]

- ✓ Firstly, as in the case with the Law of the Kyrgyz Republic "On Mass Media", the act in question establishes an insufficiently defined list of grounds for suspension and cancellation of the broadcaster's license.
- ✓ The second problem of the TRB legislation is the establishment of quotas for the use of the state language.
- ✓ The third "painful" point of the legislation on television and radio broadcasting is the rules concerning licensing. Finally, problems connected with the sphere of licensing in the general legislative sphere are challenged with practice of digitalization in the country.[39]

The analysis of the above-mentioned regulatory and legal acts that regulate the activities of the mass media proves:

a) That until now there are three acts containing similar norms (media and journalistic laws) regulating in both cases the mass media (media and television laws). Perhaps, for more effective application of the norms of these legislative acts, it is necessary to combine them into a single document.

b) Serves as an evidence of their relative immutability. In general, perhaps, the fact that the rules on the media and journalists' work for a long time established by law remain unchanged or stable, could be considered as a positive factor. The practice of lawmaking in Kyrgyzstan shows that often legislative initiatives are aimed at tightening the rules, which is cause concerns from the professional community. This applies also to the media sphere, all initiatives taken recently by members of the parliament and the government to amend the Law of KR on Mass Media has taken for freedom of the mass media restrictive rather than protective potential. As pointed out by the PF "Institute Media Policies" in its commentary to amendments to the Law of the Kyrgyz Republic "On Mass Media" dated 2013: "The experience gained over the years shows that any initiative of a state official or members of the parliament, which at first glance is harmless, in the course of discussion changes its focus on tougher regulation of media activities.".[40] It is sad to admit, but the situation regarding this law has not changed after years.

c) It also evidences that the professional community needs to conduct an extended legal analysis of the Law of the Kyrgyz Republic "On Mass Media" and the Law of the Kyrgyz Republic "On Protection of Professional Activities of a Journalist" in order to prepare

[38] Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

[39] See: Ibid.

[40] Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg; - Comments of the Public Foundation "Institute of Media Polisi": "Kyrgyz media law: unexpected changes over the past 20 years" - available at: http://www.media.kg/initiatives/kyrgyzskij-zakon-o-smi-neozhidannye-izmeneniya-za-poslednie-20-let/.

proposals for the removal of provisions that have become obsolete and/or lost relevance due to the development of legislation and public relations.

The right to freedom of speech includes the right to seek and receive information.

In 1997 and in 2006, legal acts were adopted that specifically regulate the implementation of freedom of access to information and establish certain guarantees.

- **Law of the Kyrgyz Republic "On guarantees and freedom of access to information",**
- **Law of the Kyrgyz Republic "On access to information in charge of State bodies and local self-government bodies of the Kyrgyz Republic ".**

The laws "On the Mass Media" and "On Protecting the Professional Activity of a Journalist" considered above contains norms that guarantee the exercise of journalists' rights to receive information. These norms, regulating the law, do not contain implementation mechanisms through which journalists could effectively use the right for access to information. That is, in these legal acts, the legislator proclaimed the right of the mass media to seek and request information, but did not establish the duty of the persons who hold information to provide it. This problem was solved in some way after the adoption in 1997 and in 2006 of laws directly regulating guarantees and freedom of access to information.

The Law of the Kyrgyz Republic "On guarantees and freedom of access to information", adopted in 1997, regulates relations arising in the process of realization of the right of everyone to freely search and receive, research, produce, transmit and disseminate information. This law of a general nature and extends its effect to an unlimited range of subjects. Right of everyone to freely and without hindrance to seek, receive, investigate, produce, transmit and disseminate information wherever law permits this.

The second law, adopted in 2006, aims to ensure the implementation and protection of the right to access to information held by state bodies and local self-government bodies and to achieve maximum informational openness and transparency in the activities of state bodies and local self-government bodies. That is, in this law special subjects are defined, in charge of which there is any information. Positive point is the presence in the law of the provisions on communications of state authorities and mass media (art. 21). Another positive moment is the provision as the main principle on access to information held by state bodies and its timely communication. Given the specifics of the mass media work, the timeliness of obtaining meaningful information and the promptness of the information sharing in the media sphere are decisive.

All regulatory and legal acts of the Kyrgyz Republic contain provisions on the human right to information, mechanisms for its implementation, starting with the right of everyone to freely seek and ending with the right to disseminate information. At the same time, practice testifies that in itself presence of a set of information-legal norms in legislative acts at all does not testify well-being in the given sphere.[41] The Criminal Code of the Kyrgyz Republic provides

[41]Issues of violation of the right to freedom to seek, receive and impart information of all kinds were the subject of consideration by the UN Committee in 2011 in the case of Toktakunov N. v. Kyrgyzstan. During the consideration of the Committee, the Committee concluded that the author's right under article 19, paragraph 2, of the ICCPR was violated (see Statement No. 1470/2006). In its decision, the HRC concluded that Kyrgyzstan violated Article 19 of the ICCPR and is required to provide an effective remedy for those whose rights have been

for punishment for refusing to provide information to a citizen (art. 138) and for obstructing the lawful professional activity of journalists (art.151).

Among the legislative norms and provisions, it is possible to single out a whole block devoted to the exercise of the rights of citizens to the freedom of expression, freedom of information, rules of conduct and the mode of operation of the media and journalists during the election period. Among them are various instructions and regulations: information support for elections, information on voters and dissemination of information during the preparation and conduct of elections of members of parliament and local councils, accreditation of media in the preparation and conduct of elections of members of parliament, accreditation of foreign mass media correspondents in Kyrgyzstan, and others.

Before turning to the consideration of law enforcement practice in the field of observance of the right to freedom of speech and information, let us consider how the law treats defamation provisions.

➢ Legislation on defamation [42]

In order to understand what defamation means, let us consider how this concept is interpreted by the European Court of Human Rights (ECHR), since the legal positions formulated in the decisions of this body reflects the general principles that have arisen in international law on this issue.

Defamation is the dissemination, as a rule, in the media, of information discrediting the person.
In the literature there are three types of defamation:
1) deliberate unreliable defamation;
2) unintentional unreliable defamation;
3) reliable defamation, i.e. dissemination of truthful defamatory information.

The ECHR points out that unintentional, unreliable and reliable defamation, especially in the political and administrative sphere, is protected by freedom of speech, and the liability provided for in legislation for these acts is an interference of the state in the exercise of freedom of speech. In the European Constitutional legal doctrine, a norm has been established, according to which political, state and public figures should be more tolerant than other citizens to take criticism, especially related to their public activities. Unlike European courts, courts in CIS countries very often do not take into account the need to show increased tolerance in case of defamatory statements against politicians, members of parliament, government and other state authorities.

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violated, but Kyrgyzstan is also required to prevent similar violations in the future – available at http://csip.kg/themes/human-rights/.

[42]Materials used:
- Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe. October, 2016 MLDI, IPI - available at: https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf; - Commentary on the Constitution of the Russian Federation - http://constrf.ru; - The situation with freedom of speech in Kazakhstan in 2015. Analytical report - available at http://www.adilsoz.kz; - Analysis of media legislation of the Republic of Kazakhstan in 2007-2010. - Available at http://medialaw.asia/node/10354; - Report on the state of media legislation in the Kyrgyz Republic - available at http://medialaw.asia/document/-633; - Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

When considering defamatory cases, a clear distinction must be made between information (facts) and opinions (value judgments). Unlike information that is usually subject to verification and which, if it is false, should be refuted, opinions, judgments, criticisms or reflections, the truth of which cannot be verified, are more strongly protected by freedom of thought and speech and, as a rule, and they cannot be refuted in case of their error. A person has the right to demand a refutation only in cases when to him or her, in particular the media, are attributed any specific opinions allegedly contained in his public or private statements

For example, the ECHR in the cases "Duldin and Kislov v. Russia" and "Chemodurov v. Russia" of July 31, 2007,[43] Noted that the national courts recognized all the expressions used by the applicants, statements about the fact, without examining the question of whether they can be recognized as value judgments. Lack of such analysis was due to norms of Russian legislation on the protection of honor, dignity and business reputation in force at that time. As already pointed out by the European Court of Justice, they did not provide for a difference between valuation judgments and factual statements, using the single term "information", and proceeded from the assumption that any such "information" was to be proved in civil proceedings. *Unlike the Russian courts, the ECHR considered that in these cases there was not an insult but defamation, and also recalled that the main principle of the defamation case is the presence of a particular person, against whom a defamation statement was made, and limits of the permitted criticism against officials is much broader than with respect to individuals*. The ECHR acknowledged that in relation to these citizens, Russia violated Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees to everyone the right to freely express their opinion.

In cases of defamation, statements that correspond to reality must provide the defendant with absolute protection. For example, if in a written source, a statement is made that a minister has committed inappropriate spending of funds, the author of the statement cannot be accused of defamation, if it is possible to prove the veracity of his statement. But what if the defamation statement is not a fact that can be proven or disproved, but an opinion that the minister is a "corrupt official"? There are two ways to solve the problem. As noted above, the defendant can prove the factual truth of the statement (that the minister distorted information on expenditures). However, if there are other reports on the non-earmarked expenditures incurred by the Minister, one can present an argument that this opinion of the Minister's corruption is an evaluation judgment that has an actual basis. Thus, the author's statement about the minister's corruptness will be relieved from the need to prove the veracity of his statement. The ECHR in its decisions pointed out that in matters of public interest, there was no need to establish an exact connection between the value judgment of a journalist and the facts underlying his opinion.[44]

The ECHR repeatedly stated the argument, which is mentioned in the decisions on cases related to the media:
... the requirement for journalists to systematically and formally distance themselves from the contents of statements that may harm third parties or damage their reputation - is incompatible with the role of the press, which is to provide information about current events, opinions and ideas

[43]Available at http://www.echr.ru/documents/russia.htm.
[44]Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe. October, 2016 MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf.

The work of the majority of journalists essentially consists in conveying the statements of other people or, in the case of television and radio broadcasting, providing other people with a platform for speaking with an interview or in discussions. To what extent does the journalist bear responsibility for statements that were made by another person (and potentially can be defamatory)? The ECHR considered several cases when national courts brought journalists to liability for statements made by other persons. This shows that many national judicial systems continue to be inclined to hold journalists liable for the words of third parties. When reviewing cases, the ECHR made a comment that courts do not have the right to establish a certain order of work for journalists. "Punishing journalists for facilitating the statements dissemination made by another person during the interview could seriously impede the media from contributing to the discussion of issues of public interest and should not be used unless it is a matter of particularly serious situations."

In other words, it should be taken as reality that a journalist is not automatically associated with opinions expressed by other persons and there is no need to repeat it with respect to each reported opinion or fact.

The assertion of a fact is considered as defamation only when it
- ✓ false;
- ✓ operates on actual data;
- ✓ is harmful, and causes damage to the reputation of a particular person;
- ✓ and this, in turn, means that the contested statement is read, heard or seen by other persons.[45]

Defamation laws should pursue the legitimate aims of protecting reputation, but in fact they often impose unnecessary and unjustifiably extensive restrictions on freedom of expression/ belief. More often, the problem is lies in the excessive use of such laws, in the absence of appropriate remedies for the defendant (when it is not clear from the law what is allowed) and in excessive punishment for violations. In most cases, laws that operate with the notions of defamation, in fact, serves different purposes, rather than protecting reputation, goals, cooling the desire of citizen to express their own opinion.

Practice shows that in many Central Asian republics, including Kyrgyzstan, the legislative provisions on defamation are applied so aggressively that they create significant obstacles to the underlying democratic principle for public debate on pressing issues. Public figures and state authorities often file civil defamation suits against critically-voiced journalists and politicians from the opposition, seeking to silence them allegedly in a legal order. Very often defamation laws create constraints to public discussion of the state institutions' activities, prohibiting criticism of the head of state or providing for special sanctions in cases where the said person becomes the object of defamation. The very existence of such laws - even if they are not applied indiscriminately - in some cases may lead to self-censorship in the media and among ordinary citizens. In other cases, blurred statutory norms of laws in the hands of officials and politicians become a tool of concealing criticism and jamming discussions on issues of public interest.

[45]Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/.

Often, laws against defamation are abused, protecting not the reputation, but the feelings of a person. Normally, such norms include terms like "insult", "mockery", "desecration". Feelings are not subject for definition, they are subjective emotions; therefore, such laws can be used, to prevent criticism of the authorities. The way in which a person is offended by words addressed to him, or, conversely, is not touched by them, is not subject to proof - you can only rely on the feelings experienced by that person. Reputation, on the contrary, is an objective category, and the damage caused to it by external factors can be proved. Laws that protect human feelings create considerable advantages for the plaintiff: it is enough to convince the court that the contested judgment offended him, and the defendant will not be able to present anything in his defense. The terms "honor and dignity" in the laws are many-valued, and can be interpreted as both one's own feelings, and as an evaluation of a person by the society in which he lives. What is actually protected by law - reputation or feelings - should be determined by an analysis of its text and the consequences of its application.[46]

In many countries with weak economies, laws against defamation protect individual officials (including heads of state) more than ordinary citizens: the level of permitted criticism is understated, the maximum punishment is stricter, and the person who filed the suit can expect special assistance from the state. The international human rights courts have consistently held the position that high-ranking individuals should tolerate a greater degree of criticism in their address. Such persons meaningfully go to the fact that all of their words and deeds will be in the field of attention and interest of other citizens. In addition, an important aspect of the democratic way is an active discussion of how public bodies work and an open, fearless and unhindered discussion of these issues requires the strictest possible restriction of the rights of officials with regard to the filing of defamation lawsuits. *Consequently, the higher the post held, the more criticized the public official should be tolerated, including all that relates to his actions outside the office. In one of its decisions, the ECHR confirmed that politicians should tolerate not only caustic criticism, but also harsh statements.*[47]

For example: In one of the newspapers an article was published regarding the leader of the Austrian Freedom Party, who in a public speech praised the Austrian soldiers who served during the Second World War in the Wehrmacht and the SS. The article was entitled "Postscript: not a Nazi, but an idiot". In the consideration of the case on the publication of the article, the ECHR came to the conclusion that the use of this word against the politician did not go beyond the permissible limits in a democratic state.

Unlike the criminal legislation that punishes socially unacceptable acts, civil law serves to develop harmonious relations between members of society and provides compensation for harm caused by one side to the other side. Consequently, if the civil law provides for the restoration of damage done to the honor and reputation of a person, the purpose of such measures is precisely the restoration of the trampled reputation, and not retribution to the defendant. Sanctions for defamation, being restrictions on freedom of speech, should be justified as "necessary". This means that they must be proportionate - the damage to the right to freedom of speech cannot outweigh the benefits of protecting

[46] See: Ibid.

[47] Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf- and Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/data/files/pdfs/tools/defamation-abc-russian.pdf.

someone's reputation. Actually, the authorities should apply such measures in response to defamation, which, restoring the infringed reputation of a person, will not lead to a negative effect on freedom of expression.[48]

Traditionally, among countries with a weak economy, the most common judicial decision in cases of defamation is monetary compensation for the moral harm inflicted by the defendant to the plaintiff. In such countries courts, now and then, awarding huge sums, cause significant damage to freedom of speech and freedom of information. Are there alternative ways, less severe, but no less effective? These include the judicial decision to obligatory publish a refutation or to publicize the very decision of the court, which recognized the defendant's statements defamatory. Such alternatives are more "friendly" with regard to freedom of speech; and they should be applied first of all, awarding compensation payments only in cases when refutation or other similar actions cannot properly restore the injured reputation of the plaintiff. Where courts cannot do without cash payments, courts must adhere to clear criteria for determining the amount of payments that must correspond to the extent of damage suffered by the plaintiff, and to take other measures of an intangible nature to correct the damage caused.

In many countries, journalists voluntarily established self-regulatory bodies that review complaints from individuals who believe that their reputation has been damaged by the unprofessional actions of journalists. Usually such bodies do not have the authority to award payments, but they have the right to recommend to a journalist or mass media institutions the publication of a refutation or another statement. If there is such an effective system of self-regulation in the country, the courts that make decisions to correct the damage done to a person's reputation must certainly take into account its capabilities.[49]

Law Enforcement Practice

1. Within the framework of criminal proceedings

The Criminal Code of the KR in revised version of 2011 provides for the responsibility for dissemination of knowingly false information discrediting the honor and dignity of another person or undermining his reputation, including public speech, publicly displayed work or in the media - art. 127 "libel", as well as for the deliberate humiliation of the honor and dignity of another person, expressed in an indecent manner, including public statement, a publicly displayed work or the media - art. .128 "insult". Under the pressure of civil society, taking into

[48]Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf- and Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/data/files/pdfs/tools/defamation-abc-russian.pdf.

[49]In Kyrgyzstan, there is a "**Commission for the consideration of complaints against the media** - the body of self-regulation of journalists. Its main function to consider complaints from readers (viewers, listeners) on the correspondence of articles or TV and radio programs published in Kyrgyz media to the ethical norms of journalism. The Media Complaints Commission was established at the Republican Congress of Journalists in December 2007. Delegates from 120 editions, media NGOs, independent journalists took part in its work. Members of the Commission were journalists, public figures and representatives of public associations. At the same congress the Ethical Code of the journalist of Kyrgyzstan was adopted, which is the basis of the activity of professional journalists of Kyrgyzstan. The decisions of the Media Complaints Commission are tools of publicly influencing the media that violate journalistic ethics. Decisions of the Commission enable the applicant to abandon costly, lengthy and unpleasant litigation. The Commission makes its decisions within a few weeks - available at http://medialaw.kg/samoregulirovaniya-smi/.

account the recommendations of international bodies, as well as the introduction of a ban in the Constitution of the KR (adopted in 2010) on the application of criminal liability to persons who infringe on honor, dignity and business reputation), by the Law of the KR of July 11, 2011, Article 127 was withdrawn from the Criminal Code of the Kyrgyz Republic – and considered as invalid. Later on November 6, 2013, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic adopted a decision[50] recognizing Article 128 of the Criminal Code contradicting to the Constitution of the Kyrgyz Republic. In the decision of the Constitutional Chamber of the Supreme Court stated that the provisions on insult do not correspond to Part 5 of Article 33 of the Constitution of the Kyrgyz Republic, which provided for that citizen may not be held criminally liable for disseminating information defaming or degrading the honor and dignity of the person. Also contradict to Section 6, Part 4 Article 20 of the Constitution.[51] Amendments to the Criminal Code of the Kyrgyz Republic on Article 128 to be considered as invalid were adopted by the Law of the KR on 10.03.2015, one and a half years after the decision of the Constitutional Chamber.

Danger of applying criminal penalties for defamation cases - as well as one of the many arguments in favor of dealing with defamation cases exclusively in civil procedure - is that involving the state in criminal proceedings in cases of allegedly defamatory statements quickly turns the legal procedure into punishment for dissenters.

On the website of the Public Fund "Institute of Media Policy"[52], which represents the interests of journalists and the media in the judicial bodies of Kyrgyzstan, there are some statistics on court proceedings against the media and journalists in the framework of criminal proceedings, for 2005 - 2013 (before the withdrawal of Articles 127 and 128 of CC of the KR).

Thus in accordance with data provided by PF IMP:[53]:
In 2005 one case was registered: Citizen Sabirov D. requested to prosecute journalist of newspaper “Uchkun”. Plot of the case has not been indicated. Decision in absentia was made (without explanations)
In 2007 - one case: Mr. Zholdoshev A. requested to bring to criminal liability under Article 127 of the Criminal Code of Mr.Risalieva B.K. (The newspaper Kyrgyz-Tuusu, the newspaper Erkin-Too). The case was dismissed due to the lack of corpus delicti.
In 2009 - one case: Mrs.Yrysalieva G.M. requested to prosecute Mr.Sadabaev E.R. (Editor-in-Chief of the newspaper

[50] Decision of the Constitutional Chamber of the Supreme Council of the Kyrgyz Republic of 06.11.2013. On the case on verification of constitutionality of Article 128 of the Criminal Code of the Kyrgyz Republic in connection with the appeal of citizen Madinov, O.K. - available at http://constpalata.kg/wp-content/uploads/2013/11/.

[51] Constitution of the KR:

Article 20 part 4. The guarantees of the prohibition established by this Constitution are not subject to any restrictions: 6) to prosecute for the dissemination of information discrediting the honor and dignity of the person.

Article 33 part 5. No one shall be subjected to criminal prosecution for dissemination of information discrediting or degrading the honor and dignity of a person.

[52] **PF "Institute of Media Policy"** represents the interests of journalists, media and their representatives in the judicial bodies of the Kyrgyz Republic. PF IMP conducts a full range of activities, starting with the courts of first instance to the Supreme Court of the Kyrgyz Republic or until the end of the case. To reduce the number of lawsuits against the media and journalists, PF UMP carries out a preliminary examination of the media content (controversial articles before publication or plots and programs before airing) - available at http://www.media.kg/.

[53] Available at http://www.media.kg/courting-the-media./

"TV Vremya", Karakol). under Article 127 of the Criminal Code of the Kyrgyz Republic. The proceedings on the case were terminated after the conciliation of the parties..
In 2010 there were two cases: - On January 14, the newspaper "Ayat Press" (Kyrgyz-language newspaper) published a note - the opinion of an anonymous person represented as a teleworker about the ex-head of the National Television and Radio Company Mrs.K. Urumkanova. On February 1, Orozbai Kizi Kaiyrgul (Katya Urumkanova), who headed the NTRK at the time, applied to the Sverdlovsk District Court of Bishkek with a statement to prosecute under the Article 177, 128 of the Criminal Code (libel and insult) of Mr.A. Kiyazov, the editor-in-chief of the newspaper, In addition, to the same court filed a statement of claim for the protection of honor and dignity and compensation for moral damage amounting to 3.000.000 (three million) KGS. In February-March, within the framework of mediation, a number of conversations were held with the parties, after the talks the parties reached an amicable agreement. - On December 24, Mr. Bulekbaev E. filed a petition to prosecute under Article 127 of the Criminal Code of Mr.Medetbekov Sh, the Editor-in-Chief of the newspaper "Aalam". The case was dismissed on the basis of Clause 5, Article 33 of the Constitution of the Kyrgyz Republic (no one may be subjected to criminal prosecution for the dissemination of information discrediting or degrading the honor and dignity of the individual).
In 2013 - one case: Mr. Jusumatov E.J. Deputy Director of the Department of Water Resources and Reclamation, filed a statement to prosecute under Article 128 of the Criminal Code of the Kyrgyz Republic Mr.K. Aybashev ("Alibi" newspaper). On June 14, 2013, Aibashev K. was acquitted by the verdict of the Pervomaisky district court of Bishkek city for lack of corpus delicti in his actions.

Article 127 of the Criminal Code ("libel") was declared invalid in 2011, in 2015 the Article 128 of the Criminal Code was considered null and void ("insult").

Withdrawal from criminal liability such acts as dissemination of knowingly false information discrediting or degrading the honor and dignity of another person or undermining his reputation (articles 127 and 128 of the Criminal Code of the Kyrgyz Republic), as well as the Decision of the Constitutional Chamber (CC) of the Supreme Court of the Kyrgyz Republic from 14.01. 2015, which removes the mass media from the sanctions provided for in Article 329 ("knowingly false report") of the Criminal Code of the Kyrgyz Republic, are a positive factor for the mass media freedom. However, unfortunately, the practice shows that at present **attempts of the authorities to pressure against journalists and the mass media**, as well as other "dissenters", are taking **new forms.**

Let us consider two examples.

The case with journalist Orunbekov D.

On June 29, 2015, The Alamudun District Court of the Chui Province issued a decision in relation to Mr. Orunbekov D. to pay monetary compensation for moral damage in the amount of 2 million KGS in favor of the President of the Kyrgyz Republic and imposed an obligation to publish a refutation. On November 6, 2015, an executive proceeding was instituted and the journalist was given a proposal on the voluntary execution of the court's decision. It should be noted that Mr. Orunbekov D. has taken some of the actions to enforce the court's decision (part of the amount was paid, etc.), but the court decision was not fully

executed due to the difficult financial situation. Despite of this, Mr. Orunbekov D. was brought to administrative liability and further to criminal liability for failure to comply with the court's decision

It would seem that by itself the described case should not cause any negative emotions. There is a court decision and the fact of its non-fulfillment on the part of the defendant, the actions of the bailiffs of the Division of the Judicial Executors' (DJE) of Alamudun District Court is formally correct. But, there is something which is raises surprise and concern in this case is the speed of actions of the state agency in the name of the DJE of Alamudin rayon to prosecute the debtor for failure to comply with the court's decision: on November 6, an enforcement proceeding was instituted, and on December 4 an act on the non-enforcement of the court's decision was issued (less than a month).

Failure to comply with the court's decision - **Article 388 of Criminal Code of the Kyrgyz Republic**, the subject matter of this crime is the interests of justice. The Criminal Code of the Kyrgyz Republic (section 31) includes 23 articles containing the elements of crime against justice, including "failure to execute a court verdict, a court decision or other judicial act", "escape from a place of deprivation of liberty or from custody", and others.

Let us look at the statistics of the judiciary on crimes against justice (the criminal cases were examined by the courts of first instance)[54]:

Year	**Sentenced per year On crime against Justice (in total 23 Articles – Articles 317-339 of the Criminal Code)**	**Percentage (%) from the total number of sentenced per year**
2015 (sentenced in total 7475 persons)	219 individuals, (whereas 152 individuals sentenced under Article 336 of the CC «Escape from a place of deprivation of liberty or from custody»)	**2,9 %**
2014 (sentenced in total 7327 persons)	174 individuals (whereas 112 individuals sentenced under Article 336 of the CC «Escape from a place of deprivation of liberty or from custody»)	**2, 4%**
2013 (sentenced in total 7517 persons)	206 individuals (whereas 136 individuals sentenced under Article 336 of the CC «Escape from a place of deprivation of liberty or from custody»)	**2,7 %**

What do the tables show? The table shows that the percentage of criminal cases on crimes against justice, examined by courts for a certain year is negligible-each year less than 3% of

[54]Bulletin of the Supreme Court of Kyrgyz Republic - available at http://jogorku.sot.kg/sites/default/files/photos/byulleten.

the total number of convicted individuals is brought to justice for crimes against justice. At the same time, of the same 3%, more than a half (about 60%) fall on criminal cases brought on the fact of escape from a place of deprivation of liberty or from custody (Article 366 of the Criminal Code). And this, in turn, says that it is extremely rare for bailiffs to resort to such a way of enforcing court decisions, as an application for instituting criminal proceedings against debtors who evade execution of court decisions.

Is this case indicative of how the state can influence "disobedient" journalists? First - multimillion sums of claims and claims of refutation, and then - criminal cases on the facts of non-enforcement of the court's decision to recover these multimillion sums.

Before considering another example, it should be noted that on May 17, 2014, by the Law of the Kyrgyz Republic "On Amendment of Certain Legislative Acts of the Kyrgyz Republic" in **a new version of an Article 329 of the Criminal Code of the Kyrgyz Republic was set forth**: the knowingly false report (in the old version of the article) was changed to the wording "knowingly false message" on the crime committed. The legislative norm was adopted without taking into account the recommendations of international experts. Prior to the adoption of the law on the new edition of this article, an international expert review was conducted by the office of the OSCE Representative on Freedom of the Mass Media, which concluded: "It seems that in the existing wording the draft law replaces the goal of protecting the interests of independence and completeness of justice with the purpose of introducing criminal law protection of the reputation of third parties. In this sense, the draft law, in fact, criminalizes the defamation delict, thereby contradicting the international legal standards for the protection of freedom of speech and freedom of expression, as well as with the direct requirements provided for in the Constitution of the Kyrgyz Republic." The experts were requested to finalize the draft law "in order to ensure the protection of independent and full implementation of justice on the one hand and on the other hand to guarantee the inviolability of the freedom of expression. It seems that the dissemination of information by mass media should not, in principle, fall within the scope of Article 329 of the Criminal Code of the Kyrgyz Republic."[55] However, these recommendations were not taken into account.

As a result of this, civil activists, having disagreed, were forced to appeal to the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. By the decision of the Constitutional Chamber of 14.01.2015, the provisions of Article 329 of the Criminal Code were recognized as conforming to the Constitution of the Kyrgyz Republic, but only in the interpretation contained in the act of the body on constitutional control. The Constitutional Chamber of the Supreme Court stated that "*the communication in the mass media about the commission of a crime, giving rise to the initiation of a criminal case, facilitates the implementation of pre-trial and judicial proceedings, but the invalidity of such a communication cannot be regarded as deliberately false and does not constitute an offense under article 329 of the Criminal Code of the Kyrgyz Republic. A different understanding and application of Article 329 of the Criminal Code of the Kyrgyz Republic, which differs from the meaning disclosed by the Constitutional Chamber in this decision, will violate everyone's constitutional rights to freedom of expression, freedom of speech and press (articles 31, 33 of the Constitution of the Kyrgyz Republic)"*[56]. By the decision of the Constitutional Chamber of the Supreme Court of

[55]Available at http://www.osce.org/ru/fom/117939?download=true.

[56]Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic of 14.01.2015. "In the case of the verification of the constitutionality of the Law of the Kyrgyz Republic" On Amending Certain Legislative Acts of the Kyrgyz Republic "of May 17, 2014 No. 68 in connection with the appeal of the association of legal entities"

KR, the legislation and law enforcement practices in the criminal prosecution for a knowingly false message have been adjusted in such a way as to remove the mass media from the criminal rule, recognizing its application as being inconsistent with the Constitution of the Kyrgyz Republic.

The second example: March and April of this year was marked by the series of claims against mass media, journalists and civil activists, as well as the two lawyers/attorneys filed by the leader of "Ata-Meken" party ("Party Fatherland"). Apart from attracting attorneys as defenders within the civil case (see in the report), with respect to the latter on March 29 The Senior Investigation Department of the Ministry of Interior **a criminal prosecution have been started under the Article 329 of the Criminal Code of KR ("knowingly false message on the crime committed").** In the Resolution on criminal prosecution stated that on March 10, 2017 in the interests of Mr. O.Tekebaev applied to the General Prosecutor's Office Mr. A.Kanatbek and Mrs. T.Toktakunova with petition to provide legal assessment of actions of the President of KR Mr. A.Atambaev. In the course of consideration of this petition The General Prosecutor's Office did not reveal in actions of the President of KR any crime committed. In this connection, the Ministry of Interior in actions of the petitioners found knowingly false message on crime. Therefore, the criminal prosecution has been started due to the petition filed to competent bodies.

Without direct analysis of the plot on this criminal case, we will only consider the fact of bringing a person to criminal liability in the name of a lawyer / attorney. It should be noted that lawyers in the situation discussed above acted in the interests of their client, and in this connection, the fact of instituting criminal proceedings against them is puzzling. The fact that lawyers took action in the course of their professional duties when filing petition to the General Prosecutor's Office is proved by the decision to open a criminal case in which it is directly stated that A.Kanatbek and T.Toktakunova "appealed in the interests of leader of the Socialist Party" Ata- Meken "O. Tekebaev".

The main subject matter of this crime is the interests of justice. The subjective side of this crime is only a direct intent: the guilty person realizes that he is informing the authorized bodies that he knows that the crime was not true and that he wishes to communicate them. In other words, a sign of advance knowledge is mandatory. Lawyers / attorneys in our case apply to the supervising authority with a statement on giving legal assessment to statements that affected the rights of their client, i.e. they act in the interests and in order to protect the rights of their client. They are not intended to influence or disrupt the normal functioning of the justice system.

In accordance with Article 29 of the Law of the Kyrgyz Republic "On the Advocacy of the Kyrgyz Republic and the Lawyer's Activity", interference in advocacy activities carried out in accordance with the legislation of the Kyrgyz Republic or impeding this activity in any way is prohibited. According to paragraph 3 of Article 29 of the Law, an attorney cannot be held liable for the opinion expressed by him in the course of advocacy. Practice shows that cases of bringing lawyers to criminal liability for any actions in the framework of their professional activities to protect the client are rare. We can even assume that this is the only case. In this

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Association of Non-Governmental and Non-Profit Organizations "- available at http://www.media.kg/wp-content/uploads/2015/04 and Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

regard, the conclusion involuntarily arises: did the person who represented by the lawyer / attorneys's interests play the main role in this case and whether the actions of the authorities taken in the name of the General Prosecutor's Office are an act of intimidation. A lawyer is independent in the practice of advocacy, in the choice of means and ways to protect the rights and interests of persons seeking legal assistance, and is not related to the opinions of others. At the same time, the lawyer is obliged to use all means and methods provided by law to protect the rights, freedoms and legitimate interests of clients, providing clients with access to justice.

In addition, according to the Resolution of the Plenum of the Supreme Court of the KR of February 13, 2015 "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business Reputation" in cases when a citizen applies to the competent authorities with a statement in which he gives certain information (for example , to law enforcement agencies with a report about the alleged, in his opinion, or committed or preparing crime), but this information in the course of their verification did not find its confirmation, **in this case there was a citizen's implementation of constitutional right to appeal to the authorities**. These bodies, by virtue of the law, are obliged to check the information received in order to establish factual circumstances, guided by the principles of the presumption of innocence.

In this case, the actions of the General Prosecutor's Office and the Ministry of Interior of the Kyrgyz Republic can be regarded as an attempt to restrict the constitutional right (Article 41 of the Constitution of the KR) of any citizen to send appeals to state bodies and local self-government bodies, as well as a direct signal to all that touching any negative topic in relation to the current authorities will be prosecuted in spite of the established judicial practice.

2. Within the framework of civil proceedings

As it was noted in the previous sections, in case of defamation, harm is made to the person's honor, and the fact is subject to proof: the fact that the defendant disseminates information about the plaintiff, discrediting the nature of the information and the inconsistency of their reality. In the absence of at least one of the above mentioned circumstances, the claim for protection of the honor cannot be satisfied by the court.

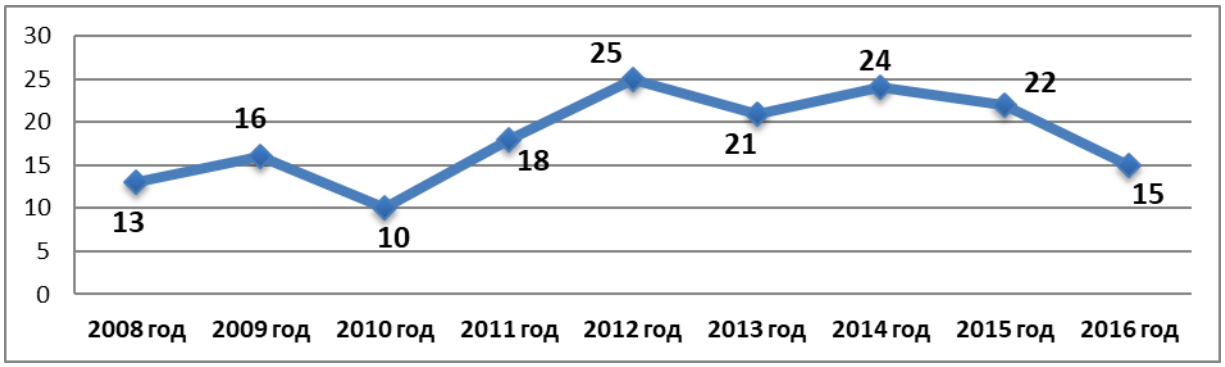
Paragraph 1 of Article 18 of the Civil Code of the Kyrgyz Republic provides for that a **citizen** has the right to demand a court refutation of information discrediting his honor, dignity or business reputation, and a **legal entity** - information discrediting his business reputation. Paragraph 5 of this article declares the right of a citizen in respect of whom information defaming his honor, dignity or business reputation is disseminated, as well as a legal entity in relation to which information defaming his business reputation is disseminated, along with a refutation of such information, to claim damages and moral harm, caused by their spread.

Article 17 of the Law of the Kyrgyz Republic "On Mass Media" specifies the procedure for refuting published information that is untrue or discrediting the honor and dignity of a person, they must be refuted in the same mass media. In addition, the order of refutation of discrediting information that does not correspond to reality, if they were distributed in the mass media, is also specified in the Civil Code of the Kyrgyz Republic (art. 18).

According to Article 1027 of the Civil Code of the Kyrgyz Republic, moral harm is compensated regardless of the fault of the harm-bearer in cases when the harm is caused by the dissemination of information discrediting honor, dignity and business reputation.

In accordance with Article 20 of the Law of the Kyrgyz Republic "On Mass Media" and Article 7 of the Law of the Kyrgyz Republic "On Protection of Professional Activities of Journalists", a journalist is obliged to check the reliability of the materials and messages being prepared. The duties contained in the Laws "On Mass Media" and "On the Protection of Professional Activities of a Journalist" mainly correspond to the principle "do no harm". The information published should not lead to violations of the rights of citizens, should not provoke violence or hatred, should not be untested (Article 5 of the Law of the Kyrgyz Republic "On protection of professional activities of a journalist" stipulates the journalist's right to check the information he receives, and art.7 of the same Law provides for the responsibility of the journalist to verify the information he provides).

According to the statistics of the Public Foundation "Institute Media Policy" cases of involving journalists as defendants in cases of protection of honor, dignity and business reputation in the Kyrgyz Republic are not single. The diagram below shows the number of claims in which the NF IMP represented the interests of a journalist (some of the cases, as unfinished, moved from one year to another, so the number of decisions can vary in the direction of decreasing or increasing). These are only claims that have passed through the NF IMP. In most cases, courts satisfy claims and oblige respondents (journalists, editorial offices) to pay monetary compensation and publish refutations.



Review of data from the web-site of the NF IMP has revealed the following:

- ✓ three-four years ago the number of claims with request to demand large amounts (a couple of millions KGS) was not very much,
- ✓ courts in making decisions on the amounts payable reduced the sum (that is, the compensation for moral damage payable was not calculated in millions of KGS),
- ✓ main emphasis was made on the obligation to publish a refutation.

We can say that in previous years, the main goal in the affairs of protecting the honor and reputation of a person was still the restoration of the trampled reputation, and not retribution to the defendant (punishment by the money "ruble"). Perhaps the judiciary proceeded from the logic that refutation, as a special way of protecting civil rights, is aimed at restoring diminished honor, dignity and business reputation to its original state and, therefore, the consequences of the defamatory tort are actually restored. This situation was observed until 2015.

Previously, the maximum amount of compensation for moral damage was presented in thousands of KGS, at the present time it is estimated at millions. For citizens of Kyrgyzstan, it has become customary that the amount of the claim is estimated at only one or two to three million KGS. ***Tendency for an increase in the valuation of its disreputable reputation began to depend on the social position of individual. The higher post of an official, the more "his reputation is worth".***

For example:
- In 2015, the Sverdlovsk District Court in Bishkek, from the journalist U.Botobekov and Publishing House "Vecherniy Bishkek", recovered 1.8 million KGS in solidarity in the form of compensation for moral harm caused to the plaintiff I.S. Ilmiyanov.
- In 2016, the Alamudun District Court of the Chui Province from the journalist D.Orunbekov, 2,000,000 som was collected in favor of the President of the Kyrgyz Republic.

To date, there are six lawsuits filed in the courts in February-March-April of this year, with a total of 62 million KGS of claims[57]:

1. **Lawsuit of 24 February**
   CLAIMANT – Social and Democratic Party of Kyrgyzstan;
   DEFENDANT: Human rights activist R. Karasartova and news agency "24.kg", who posted her comment that politicians allegedly sell posts; The amount of the claim - 2 million KGS - per million from each defendant

2. **Lawsuit of March 6**
   CLAIMANT: The General Prosecutor of the Kyrgyz Republic, in the interests of President A. Atambaev;
   DEFENDANTS: two lawyers of the leader of the Ata Meken party, O. Tekebaev, who gave a press conference on March 1; Institution Azattyk Media (site azattyk.org) and Public Foundation ProMedia (site Zanoza.kg); The amount of the claim is 23 million KGS: 10 million from lawyers, 10 million from Azattyk, 3 million from Zanoza.kg.

3. **Lawsuit of March 6**
   CLAIMANT: The General Prosecutor of the Kyrgyz Republic, in the interests of President A. Atambaev;
   DEFENDANTS: "Azattyk Media" (site azattyk.org) and Public Foundation "ProMedia" (site Zanoza.kg). Media resources took comment from the leader of the faction "Ata Meken" O. Tekebaev in January 2017, the respondent himself is not in the defendants; The amount of the claim is 13 million KGS: 10 million KGS from Azattyk and 3 million from Zanoza.kg

4. **Lawsuit of March 13**
   CLAIMANT: The General Prosecutor of the Kyrgyz Republic, in the interests of President A. Atambaev;
   DEFENDANT: Public Foundation "ProMedia" and author Zanoza.kg Naryn Ayyp. The reason for the claim was an article dated 22.10.2015, which asked questions about where the funds are from the President's Fund, from which the head of state distributes money for charity; Amount of the claim: 6 million KGS, three million from each defendant

[57]Information is available at http://www.media.kg/news/iski-vlastej-protiv-smi-podrobno-i-ponyatno-v-odnom-materiale.

5. Lawsuit of March 31

CLAIMANT: The General Prosecutor of the Kyrgyz Republic, in the interests of President A. Atambaev;;

DEFENDANT: Non-governmantal Foundation "ProMedia" and author Zanoza.kg Naryn Ayyp. The reason for the claim was a series of analytical articles on the political, economic and social situation in Kyrgyzstan; Amount of the claim: 6 million KGS, three million from each defendant

6. Lawsuit of April 20

CLAIMANT: The General Prosecutor of the Kyrgyz Republic, in the interests of President Mr.A. Atambaev;;

DEFENDANT: Mrs. Ch. Jakupova, Director of the Public Foundation “Clinic of Law”, Mrs. Maslova D.U. and Mr. Idinov N.A. Public Foundation "ProMedia", founders of the Public Foundation "ProMedia". The cause for the claim was the speech on March 30 of this year of Jakupova Ch.I. at the "round table" organized by the Ombudsman of the Kyrgyz Republic and posted on the website of Public Foundation "ProMedia" - http://zanoza.kg; The amount of the claim is 12 million KGS, three million from each defendant

General comment concerning all above mentioned claims:	
As we could see, in each of these claims, media-resources reproduces comments of certain people or taking an interview, as well as expressing their own opinion on certain subjects. To which extent journalist is responsible for the statements made by another person (and potentially could be defamatory)? The work of majority of journalists considerably consists of communication of opinions expressed by other people, or in case of TV and Radio broadcasting, provision to other people the platform for speeches during the interviews or discussions. Journalist should be prosecuted for the communication of messages on defamatory statements expressed by other individuals or reproduction of expressed statements of other people, when the following three conditions are observed: ✓ statements have been made during the discussion of the publicly important matter, ✓ person who repeated other people's words, refrained from their own approval of them ✓ whenever someone conveys the words of other persons, it is clearly indicated that these words originally belong to someone else. This means that the mass media, whose duty is to inform the general public, can broadcast someone's statements damaging the reputation of others, yet journalists cannot be asked to always distance themselves from such statements or verify the veracity of every statement. This would extremely complicate the work of the mass media and would harm the proper flow of information to citizens. . The ECHR repeatedly mentioning the argument, which is stated in a number of decisions on cases related to the mass media: "... the requirement for journalists to systematically and formally distance themselves from the content of a statement that may harm third parties or damage their reputation is incompatible with the role of the press, which consists in	**Art.26 of the law of the KR «On Mass Media»** The mass media do not bear responsibility for the dissemination in the media of information that does not correspond to reality: …. b) If they are a literal reproduction of public speeches; c) If they were contained in the speeches of citizens going on the air without an appointment.

providing information on current events, opinions and ideas." In other words, it should be taken as reality that a journalist is not automatically associated with opinions expressed by other persons and there is no need to repeat it with respect to each reported opinion or fact. The ECHR, by its decisions, created a new concept, which was then used in the consideration of cases. The court emphasized the important role of the press as a "public guard" on important issues, both political and public interest: "Although the press should not transgress the established boundaries, including to" protect the reputation ... of others ", however, its duty - transfer information and ideas on issues of public importance. If [the press] is tasked with disseminating such information and ideas, then the general public, in turn, has the right to receive them. Otherwise, the press would not be able to play the vital role of the "public guard". The argument of the ECHR is that if journalists and editors begin to demand that each published statement be checked against strict legal standards, this will limit the freedom of the mass media and jeopardize their role as a "public guard." Adequate professional standards will be sufficient to ensure that reasonable efforts are made to verify the published material. The conscientious delusions of journalists should not be punished in a way that restricts the freedom of the mass media.	For example, ECHR The case of Torgenson against Iceland
COMMENT on the claim of SDPK to R. Karasartova and NA «24.kg»	
Concerning the responsibility of the news agency "24.kg", see the comment above. Concerning the statements of the human rights activist that the politicians are selling posts: this statement is hypothetical and the opinion of the human rights activist should be regarded as an appraisal judgment because it is based on a sufficient factual base, since the President of the Kyrgyz Republic had previously officially recognized the fact of a high degree of corruption in Kyrgyzstan. See the Presidential Decree of November 12, 2013, UE No. 215 "On measures to eliminate the causes of political and systemic corruption in government bodies"). Difference between an appraisal proposition and a statement of fact is, in the final analysis, the degree of factual proof that must be achieved. In addition, the question arises, why does the phrase "politicians sell posts" SDPK took to its account? Proceeding from the ECHR's position, when considering cases on the protection of honor, dignity and business reputation, it is necessary to distinguish between statements about facts that can be verified and verification judgments, opinions, beliefs that cannot be checked for consistency with their reality, since they are an expression of subjective opinion and views. It should be added that according to clause 17 of article 383 and part 2 of article 384 of the Civil Procedural Code of the KR, as well as the	For example, ECHR Case "Dulldin And Kislov against the Russian Federation "(Complaint No. 25968/02) Judgment of the Court, July 31, 2007 - available at http://www.echr.ru/ documents/doc

Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic "On Judicial Practice for the Resolution of Disputes on Protection of Honor, Dignity and Business Reputation" dated February 13, 2015, No. 4, claims for protection of honor and dignity between legal entities are subject to review not in district but in inter-district courts.

Judge of the Sverdlovsk District Court in Bishkek was obliged to return the claim in accordance with the requirements of Article 136 of the Civil Procedural Code of the Kyrgyz Republic. The defendants in the course of the court session made a petition to transfer the claim for jurisdiction to the Bishkek inter-district court. The judge rejected the petition, arguing that the plaintiff is not a commercial organization. All the absurdity of this motivation is that according to Article 85 of the Civil Code of the Kyrgyz Republic, political parties are legal entities. According to Articles 383 and 384 of the Civil Procedural Code of the Kyrgyz Republic, there is no difference whether a legal entity is a commercial or non-profit organization when considering non-property disputes.

COMMENTARY on the question of determining the proper defendant

The refutation of information discrediting honor, dignity or business reputation and compensation for damages and moral harm caused by their distribution are the two separate requirements.

The demand for refutation of information can be without a claim for damages and moral harm, and vice versa, the demand for compensation of moral harm can be claimed independently. Respondents in such cases may be different people.

When considering a case, the court must determine the circumstances that are important for the resolution of cases: whether the dissemination of information, whether the information corresponds to the reality and viciousness of the information.

In case of occurrence of cases referred to in Article 26 of the Law of the Kyrgyz Republic "On Mass Media", when the media reproduced someone's public statements, how should the question of the proper respondent be resolved?

- When establishing the fact of the information dissemination:
  mass media are involved as defendants, and they are **responsible for publishing a refutation;**
- When establishing the fact of unreliability and viciousness of information:
  Persons who are authors of the disputed information and are liable for damages and moral harm (if such a request was claimed) should be brought in as defendants.

In such cases, the correspondence of the facts of reality must be proved by a citizen, an individual entrepreneur and a legal entity from whom such information has been received, and, in case if the claim is satisfied, the body of the mass media can only be charged with reporting the court decision (see paragraph 15 of the Plenum Resolution of the Supreme Court of Kyrgyz Republic of February 13, 2015 "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business Reputation").

In connection with the foregoing, we consider the request in claims for recovery of monetary compensation from the mass media not correct. **The media should act as co-defendants** within the framework of the requirement to publish a refutation, if it is proved that the information is unreliable and vicious.

COMMENTARY concerning the claim against the Director of PF LC "Adilet"

During the "round table" mentioned above, a discussion of the current situation with freedom of speech in Kyrgyzstan was held, in other words, discussion of issues of public interest. The Director of the PF LC, speaking in the debate, expressed her personal opinion on this issue, perceived by the plaintiff as the dissemination of information (facts) discrediting the honor and dignity of the President of the Kyrgyz Republic.

The most important aspect of the democratic order is an open, fearless and unhindered discussion of how any state officials work, regardless of the post they hold. The international human rights courts have consistently held the position that high-ranking individuals should tolerate a greater degree of criticism in their address. Such persons meaningfully go to the fact that all of their words and deeds will be in the field of attention and interest of other citizens. The higher the post, the more critical the public official should tolerate, including everything related to his actions outside the office. In its decisions, the ECHR confirmed that politicians should tolerate not only caustic criticism, but also harsh statements.

In the statement of claim, the Prosecutor General's Office, citing the conclusion of specialists who conducted a linguistic study of the speech, recognizes that the speech contains emotional-expressive elements, irony and sarcasm.

The ECHR in its decisions emphasized that sometimes in the expressed opinion it is possible to find elements perceived, literally, as facts, but they were conceived as a means of expressing an appraising judgment. Examples include such rhetorical devices as jokes, figures of speech or artistic exaggeration

The ECHR takes a very firm stand: no one can be deprived of the right to express one's opinion, an opinion is a person's belief based on his understanding of facts and different from the facts themselves. For example, the European Court of Human Rights, considering the case of a political activist who called the President of France "a miserable jerk" and found guilty of insult, ruled that there had been a violation of the activist's right to freely express his opinion.

Time will show which decisions the courts are going to take on the aforementioned lawsuits. Particular concern raises the fact that according to earlier claims filed for the protection of honor, dignity and business reputation and subsequently reviewed by courts, most of the suits were satisfied by the courts.

The main standards that govern the courts in cases involving the protection of honor, dignity and business reputation are the Civil Code of the Kyrgyz Republic, the Resolution of the Plenum of the Supreme Court of the KR dated February 13, 2015 "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business Reputation" and the Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic of November 4, 2004 "On some issues of judicial practice of the application of legislation on compensation for moral harm."

According to Part 2, Article 96 of the Constitution of the Kyrgyz Republic, the Plenum of the Supreme Court provides explanations on judicial practice, which are mandatory for all courts and judges of the Kyrgyz Republic. Let's consider some explanations contained in the above-mentioned decisions of the Plenum of the Supreme Court of the KR.

Decision of the Plenum of the Supreme Court of the KR dated February 13, 2015 "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business

Reputation" establishes that when considering civil cases brought under Article 18 of the Civil Code of the Kyrgyz Republic, to resolve cases of protection of honor, dignity and business reputation. These circumstances are:
1) whether the information was disseminated, against which refutation claim was filed;
2) whether this information is true;
3) whether they discredit the honor, dignity and business reputation of a citizen, an individual entrepreneur and a legal entity.

A claim for a refutation of the information circulated by the defendant can be satisfied by the court on the basis of Article 18 of the Civil Code of the Kyrgyz Republic only if there is a combination of the above mentioned circumstances. In the absence of at least one of the above circumstances, the satisfaction of the claim must be refused.

Judicial practice testifies that in the consideration of cases the establishment of the fact of distribution does not cause any difficulties, it presents certain difficulties in establishing the reliability and viciousness of the information. Perhaps this is due to the fact that not many judges have the skills to deal with such specific issues. *Unfortunately, we have to note that in the judicial practice of the KR the concept of "information" is still practically not delimited from the concept of "opinion"*. This situation leads to the fact that in the consideration of disputed texts courts often make decisions in which defendants are actually forced to refuse their own opinion or if the information published in the media is interpreted as the opinion of a particular journalist.

According to the above-mentioned claims (see pp.52-53 of the report), the judiciary has not yet made its decisions, but the courts have already seized the accounts of the defendants as security measures. Formally, the courts act within the law, but against the backdrop of constantly sounding in the public censures regarding the (not) dependence of the judiciary and, given whose interests the lawsuits have been filed, these actions of the judiciary raise concerns and doubts about the predetermined nature of the cases.

Consider a little more in detail one of the latest lawsuits brought to court on April 20.
In preparation for the consideration of the next lawsuit on the protection of the honor and dignity of the President of the Kyrgyz Republic (with regard to the director of the PF LC Adilet, the ProMedia and the founders of the ProMedia NGF), the judiciary has surpassed itself. As measures to secure the claim, the court, in addition to seizing the defendant's property, also prohibited the departure of defendants from Kyrgyzstan. Again, formally, the court, according to articles 140-141 of the Civil Procedural Code of the Kyrgyz Republic, has the right to prohibit the defendant from taking certain actions, and in other cases may take other measures to secure the claim.

What is the security of the claim?
Security for the claim - is the procedural action of a court or judge on a case accepted for consideration caused by the need to apply the measures provided by law when their non-acceptance may lead to the impossibility of executing or complicate the execution of the subsequent decision on the award, which entered into legal force. The issue of the danger of non-fulfillment of a decision after its entry into legal force, based on circumstances, may arise in any situation of the case, if the danger is obviously or reasonably assumed, that failure to take measures to secure the claim could make it impossible or impossible to enforce a court

decision.[58] It means that this procedural action is aimed at securing the execution of a court decision that has been enacted and entered into legal force that is, not ensuring the appearance of parties to the court session, not ensuring any other procedural actions, etc. It should be noted that in the case before us, as a security for the claim and, accordingly, execution of the court decision (in the event of a decision to recover from the defendant compensation for moral harm), the court seizes real estate, the market value of which allows for the subsequent unimpeded execution of the judgment.

In this regard, the motives that prompted the judge (the Oktyabrsky District Court in Bishkek) to use as an interim measure exactly the ban on departure are not clear. At the same time, we, of course, remember that the civil procedural legislation of the Kyrgyz Republic (Article 52 of the Code of Civil Procedure) allows the parties to conduct cases in court through representatives, i.e. without personal participation.

Justice in civil cases is carried out on the basis of equality of all citizens before the law and the court (see Article 7 of the Civil Procedural Code of the Kyrgyz Republic and Article 16 of the Constitution of the Kyrgyz Republic). Proceeding from this principle, the legislator obliges the court, when considering cases, to take into account the interests of both the plaintiff and the defendant. The institution for securing the claim does not exclude the protection of the defendant's interests as an equal party in the process and provides for defendant's protection measures against unreasonable application of measures to secure the claim (Article 147 of the Civil Procedural Code of the Kyrgyz Republic). Consequently, the court's decision on the application of a measure to secure a claim must contain not only references to the norms of law, but also weighty arguments that the failure of the court's chosen measures to secure a claim could make it difficult or impossible to enforce a judicial act, as well as the justification for the proportionality of the security measures to the claim. The existing court ruling of April 26, 2017, on the adoption of interim measures does not contain a justification why the judge decided to elect an interim measure in the form of a ban on the departure of defendants from Kyrgyzstan, thereby violating their constitutional right to freedom of movement.

The judge, having applied to the defendants an interim measure in the form of a ban on leaving Kyrgyzstan, referred at the same time to the norms of the Kyrgyz Republic's Law "On External Migration" (art. 46). In our opinion, there is a clear conflict between normative legal acts. In accordance with Article 25 of the Constitution of the Kyrgyz Republic, everyone has the right to freedom of movement, choice of place of residence or residence in the Kyrgyz Republic, as well as the right to freely travel outside Kyrgyzstan. However, this constitutional norm does not contain any exceptions. As you know, the Constitution has the highest legal force and direct effect in the Kyrgyz Republic (Article 6). The Law of the Kyrgyz Republic "On External Migration" regulates legal relations in the field of external migration (preamble of the Law). When considering civil cases, the judge is guided by the Constitution of the Kyrgyz Republic, the norms of the Civil Procedural Code (CPC) of the KR, the Law of the KR "On the Supreme Court of the Kyrgyz Republic and local courts" and other laws of the

[58]See the Scientific and Practical Commentary on the CPC KR, 2nd edition. - Bishkek, YurInfo, 2011. (Author's collective / working group: LV Gutnichenko, Honored Lawyer of the KR, judge of the highest qualification class - head of the working group; Davletov AA, Candidate of Law, judge of the highest qualification class; Boronbaeva DS, Judge Chui Regional Court, Davletbaeva MA, deputy chairman of the Bishkek City Court of the KR, Kudaibergenov AN, judge of the Supreme Court of the Kyrgyz Republic, honored lawyer of the Kyrgyz Republic, Rybalkina AD, judge of the Bishkek city court of the Kyrgyz Republic, etc.).

KR adopted in accordance with them (Article 1 of the CPC). At the same time, the norms of civil procedural legislation, contained in other laws and other acts, must comply with the CPC of the KR (Part 2, Article 1).

Paragraph 8 of Article 46 of the Law of the Kyrgyz Republic "On External Migration" states that a citizen of the Kyrgyz Republic may be temporarily denied departure from Kyrgyzstan in the event that a civil claim is brought against the applicant before the court proceedings are completed. That is, the action specified in the paragraph is possible only within the framework of the initiated civil proceedings, but the norms of the CPC do not contain such a prohibition, and, given the institution of representation, this norm generally loses its meaning. The current legislation in some cases provides for mandatory participation in the court of the represented party, but all of these cases are clearly spelled out in regulatory legal acts. In the case under consideration, there are no such reservations.

32 of the Law of the Kyrgyz Republic "On Regulatory Legal Acts of the Kyrgyz Republic" regulates the procedure for resolving conflicts, in case of their occurrence, namely:

- ✓ in case of conflict between normative legal acts, subjects of legal relations are guided by a normative legal act having higher legal force (Clause 1, Article 32);
- ✓ the norms of laws in cases of their discrepancy with the norms of the codes can be applied only after making appropriate changes to the codes (paragraph 2 of Article 32);
- ✓ in the event of a conflict between normative legal acts having equal legal force, and if none of them contradicts the act with higher legal force, the provisions of the act regulating this sphere of legal relations operate (art. 32, paragraph 3).

Consequently, the reference of the judge to paragraph 8 of Article 46 of the Law of the Kyrgyz Republic "On External Migration" in support of the choice of an interim measure is illegal. This legislative norm does not comply with the Constitution of the Kyrgyz Republic (an act that has a higher legal force) and the CPC of the KR (an act regulating the sphere of legal relations in the framework of civil proceedings). In our opinion, in this case, the judge should be guided only by the norms of the Constitution of the KR and the CPC of the KR, An interim measure in the form of a ban on leaving, it is still a procedural act.

Analyzing the circumstances, in the cases listed above one can single out common signs: defendants in the face of the media and journalists in their articles reproduce someone's opinions or publish interviews; suits are filed to those media that give the opportunity to speak to people who have a different point of view from the point of view of authorities. It is alarming that lawsuits are filed for the publication of an interview, the content of which is not satisfied by this or that person, that is, not for a journalistic investigation, but only for posting an interview or a third party opinion. Analytic articles are criticized for the actions of the authorities in implementing foreign, domestic, economic policies. These facts can be regarded as a warning to the media - to exclude any criticism and negative statement about the authorities.

How such cases are considered in international judicial practice and what does the Plenum of the Supreme Court of the Kyrgyz Republic prescribe?

International practice [59]	**Plenum Resolution of the SC of the KR (2015)**
No one shall be held liable for reporting defamatory statements by other persons or for the reproduction of what others have said, but with the following three conditions: ✓ the quote was said during the discussion of a socially significant issue, ✓ person who repeated other people's words, refrained from their own approval of them, ✓ whenever someone conveys the words of other persons, it is clearly indicated that these words originally belong to someone else. This means that the media, whose duty it is to inform the public, can broadcast someone's statements damaging the reputation of others, yet journalists cannot be asked to always distance themselves from such statements or verify the veracity of every statement. This would extremely complicate the work of the mass media and would harm the proper flow of information to citizens.	Paragraph 15. For the dissemination of information discrediting honor, dignity or business reputation, there comes a civil-law liability provided for by Article 18 of the Civil Code of the Kyrgyz Republic. At the same time, when distributing such media reports, it is necessary to bear in mind that Article 26 of the Law of the Kyrgyz Republic "On Mass Media" lists the grounds for releasing the media from liability: a) if this information was contained in official documents and communications; b) if they are received from news agencies or press services of state and public bodies; c) if they are a verbatim reproduction of public speeches; d) if they were contained in the speeches of citizens going on the air without an appointment. This list is exhaustive and is not subject for any extensible interpretations..

Essential difference between these two approaches is that international judicial practice recognizes **that journalists cannot be asked to always distance themselves from defamatory statements or verify the truthfulness of each statement**. In the national legislation, providing an exhaustive list of grounds for releasing the media from responsibility for defamatory statements, it is stipulated that it is not subject to broad interpretations, and in paragraph 14 of the Resolution, in turn, the Plenum of the Supreme Council of the Kyrgyz Republic interprets Article 20 of the Law of the Kyrgyz Republic "On Mass Media" which contains a norm on the duty of a journalist to "verify the authenticity of his messages". The plenum clarifies to lower courts what exactly this journalist's duty means:

- **it means it's his duty** to comprehensively check the disseminated information and **be responsible for every word written in the article or sounded in a television broadcast** if he was preparing a distributed material.

On the basis of this message, it is possible to guess what decisions will be taken by the judiciary on the aforementioned claims.

Defendants in one of the above cases are lawyers / attorneys of the leader of the Ata-Meken party (on March 6, the plaintiff - the Prosecutor General of the Kyrgyz Republic, in the interests of President A. Atambayev, the defendants: two lawyers of the party leader "Ata Meken" O.Tekebaev, who gave a press conference on March 1, the establishment of Azattyk

[59]Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf and Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/data/files/pdfs/tools/defamation-abc-russian.pdf.

Media (site azattyk.org) and Public Foundation ProMedia (site Zanoza.kg), the amount of the claim - 23 million KGS: 10 million from lawyers, 10 million from Azattyk, 3 million from Zanoza.kg). Again, as with the criminal case against lawyers, it is puzzling to find them as defendants for the actions they took as part of their professional duties to protect the interests of the client.

The Plenum of the Supreme Court of the Kyrgyz Republic in paragraph 20 of the resolution notes that cases on protection of honor, dignity or business reputation of public figures have their own peculiarities. At the same time, referring to the Declaration on Freedom of Political Discussion in the Media, adopted on February 12, 2004 at the 872nd meeting of the Committee of Ministers of the Council of Europe, cites its norms (namely the norms of Article 3) in a somewhat half-way.

Thus, the Resolution of the Plenum states that "in accordance with Articles 3 and 4 of the Declaration on Freedom of Political Discussion in the Media, adopted on February 12, 2004 at the 872nd meeting of the Committee of Ministers of the Council of Europe, politicians seeking to secure public opinion, by virtue of it agrees to become an object of public political discussion and criticism in the media. Public officials can be criticized in the media about how they carry out their duties, as this is necessary to ensure the public and responsible execution of their powers. Public figures are open to their words and deeds."

In the Declaration, however, the norms of Article 3 allow society to exercise **strict control over politicians and vigorously, severely criticize** in the media how they performed or performing their duties.

At the same time, the resolution of the Plenum states that "it is necessary to distinguish between constructive criticism from unjustified "mudslinging", "slander" of a person, who seek to humiliate his dignity, tarnish his reputation, discredit." The Plenum of the Supreme Council of the Kyrgyz Republic, referring to the standards of the Council of Europe, does this very selectively: agrees that public figures can become the object of public political discussion and criticism in the media, but does not explain to the lower courts that "the limit of admissible criticism of a public person is significantly more extensive than that of another ordinary person." It was mentioned above that in the ECHR's practice it was repeatedly noted that in the case of criticism of actions or statements of a public person on political issues, the limits and forms of admissible criticism are practically unlimited.[60]

The realities of Kyrgyzstan testify that officials regularly make attempts to restrict the mass media in expressing critical opinions, arguing that this is a fight against frenzied criticism and slanderous campaigns. The Supreme Court with its statement running a risk creating a basis for abuse of the right to protect honor, dignity and business reputation by officials.[61]

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[60]Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf; - Briefly about defamation. Basic concepts of the legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/data/files/pdfs/tools/defamation-abc-russian.pdf; - Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

[61]Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.

One of the drawbacks of the Supreme Court Plenum Resolution dated February 13, 2015 "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business Reputation" is the lack of clarification - how to differentiate assessment statements from judgments about facts. An analysis of what is a fact and what is a personal, estimated opinion is the most difficult in cases of defamation. It was noted above that the assessment statements does not operate with facts, and therefore its truthfulness or unreliability is not to be proved, while the facts can be subjected to analysis for compliance with reality and, therefore, to be considered in a defamation dispute. Without the interpretation of the highest court on this issue, lower courts are unlikely to be able to form law enforcement practices that ensure a proper balance by using constitutional right to honor and dignity, on the one hand, and the right to freedom of expression, freedom of speech and the press, from the other side.

The use of specialized knowledge in civil proceedings in cases of defamation is an important tool for the correct and comprehensive disputes resolution. There are many problems and ambiguities in the application of the rules of law. The Supreme Court Plenum Resolution "On Judicial Practice for Resolving Disputes on the Protection of Honor, Dignity and Business Reputation", of course, answered many questions that arise with the judiciary. But at the same time, the correct qualification of the act as defamatory and the development of the necessary legal measures to protect the honor and dignity of citizens and the business reputation of legal entities to courts appear to be difficult. Therefore, it is extremely important for courts to seek help from specialized knowledge, which is supported by experts, which will help the judge accurately determine the meaning, notion, negativity or positivity of words and phrases.

In case when a claim for moral damages is filed together with the demand for protection of honor, dignity and business reputation, the court resolves these requirements in accordance with the norms of the Civil Code of the Kyrgyz Republic and the Plenum Resolution of the Supreme Court of the Kyrgyz Republic of November 4, 2004 "On Some Issues of Judicial Practice of Application Legislation on compensation for moral harm."

In determining the amount of compensation, the court should proceed from the criteria of fairness and reasonableness. The courts, when determining the amount of compensation for moral harm, must take into account the subjective assessment of the severity of the moral and/or physical suffering caused to him by the citizen, as well as objective evidence of this, in particular:

- ✓ vital importance of personal non-property rights and intangible benefits (life, health, freedom, inviolability of home, personal and family secrets, honor and dignity, etc.);
- ✓ degree of moral and / or physical suffering experienced by the victim (when depriving or restricting freedom, causing bodily harm, death of close relatives, loss or restriction of ability to work, etc.);
- ✓ form of guilt (intent, negligence) of the inflictor of harm, when it is necessary to compensate for moral damage.

The issue of the court's determination of the compensation amount for moral damage is of an evaluation nature. This is due to the fact that the current legislation does not contain clear criteria for its definition.[62] As a general rule, judges make decisions within the limits of the

[62]**For example,** when examining cases by the courts of the Russian Federation, judges in determining the amount of compensation for moral time take as a model the methodology developed by the chief scientist of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, member of the scientific advisory

discretion granted to them.

The lack of effective instruments for determining the compensation amount for moral harm in the legislation led to a variety of judicial practices in cases of protection of honor, dignity and business reputation, when the compensation for moral damage awarded to the media and journalists varied on a large scale.

It can be assumed that the criteria of fairness and reasonableness imply that in determining the compensation amount for moral harm, the courts should strive, on the one hand, to maximize the moral damage caused to the plaintiff, and on the other hand, to prevent the plaintiff from unjust enrichment and not to put in an excessively heavy property position of a defendant.

But what fairness and reasonableness can be testified by a court decision, which results in bankruptcy or termination of the defendant's activity in the name of the mass media. The collection of millions of dollars from journalists and the media can ultimately lead to such consequences (for example, as a result of the impossibility of executing a court decision to recover 1 800 000 KGS, journalist U.Botobekov was forced to leave Kyrgyzstan, for failure to comply with a court decision to recover 2 000 000 KGS in the favor of the President of the Kyrgyz Republic, and against journalist D. Orunbekov, a criminal case was opened).

The tasks of civil proceedings are protection of violated or challenged rights, freedoms and legally protected interests of citizens and legal entities. But the solution of these tasks should not be carried out through punitive measures, and the main goal in the cases of protecting the honor and reputation of a person is the restoration of the trampled reputation, and not the retribution or "destruction" of the defendant.

To date, there is an ambiguous situation: six claims for the protection of honor, dignity are brought in the interests of the President of the Kyrgyz Republic. One suit has been reviewed by the court and 2 million KGS are subject to recovery from journalist D. Orunbekov, five lawsuits are in the courts at the stage of consideration. The number of lawsuits filed in courts in such a short time, as well as the sums of the claims referred to above, is the cause for concern. The claims are filed within the framework and in compliance with the provisions of the Law of the Kyrgyz Republic "On guarantees of the activities of the President of the Kyrgyz Republic", which establishes forms and ways of protecting the President of the Kyrgyz Republic, the ex-president of the Kyrgyz Republic and members of their family. Let's take a closer look at Article 4 of this Law, in accordance with the norms of which the Prosecutor General appealed to the court in the interests of the President of the Kyrgyz Republic.

In accordance with article 4 of the law "in the cases of information dissemination discrediting the honor and dignity of the President of the Kyrgyz Republic, *the Prosecutor General of the Kyrgyz Republic is obliged, if other measures of the prosecutor's response failed to bring the required results, to apply to the court on behalf of the President of the Kyrgyz Republic for the protection of his honor and dignity. At the same time, the Prosecutor General of the*

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council of the Supreme Court A. Erdelyevsky. Its essence lies in the fact that there is a certain base amount and a number of correction factors that take into account the degree of fault of the harm-bearer, the individual characteristics of the victim, the actual circumstances of the injury, the degree of fault of the victim and so on. According to calculations by Erdelevsky, 1080 times the minimum wage is required to compensate for serious harm to health (SMIC). For insult in the media - 24 minimum wages multiplied by a coefficient of 0.03 and so on - author's note.

Kyrgyz Republic is recognized as the legal representative of the President of the Kyrgyz Republic, he enjoys all the rights of the plaintiff, the defendant, the victim, as provided by procedural legislation ... "

The first thing that attention is immediately drawn to, the norms of this article, both in general and the Law itself, have not been brought into line with the current Constitution of the Kyrgyz Republic, for example guaranteeing the inadmissibility of criminal liability for defamation. The law was adopted in 2003 and, despite the fact that the provisions of the Constitution of the Kyrgyz Republic have changed twice in the past period of time, the powers of the Kyrgyz prosecutor's office have also changed, but the norms of the Law have not undergone significant changes. It should also be emphasized that Article 4 of this Law contradicts the provisions of the Civil Procedural Code of the KR.

The rules of consideration and settlement of civil cases by the courts of the Kyrgyz Republic are regulated by the Civil Procedural Code of the Kyrgyz Republic, which is the main source of civil procedural norms. According to Part 2 of Article 1 of the Civil Procedure Code of the Kyrgyz Republic, the norms of civil procedural legislation contained in other laws must comply with the CPC. In addition, in accordance with Article 6 of the Law of the Kyrgyz Republic "On normative legal acts of the Kyrgyz Republic", an unconstitutional law, and the Law of the Kyrgyz Republic "On Guarantees of the Operation of the President of the Kyrgyz Republic" is the same in the hierarchy of legal force below the codes.

CCP determines the forms, grounds for participation and powers of the prosecutor in the civil process. Article 45 of the Civil Procedural Code of the Kyrgyz Republic establishes two forms of participation of the prosecutor in the process:
- The initiation of civil action by filing a lawsuit;
- involvement into the process to implement the powers assigned to the prosecutor.

In the cases described above, the Prosecutor General filed a lawsuit in the interests of the President of the Kyrgyz Republic. Paragraph 2 of Article 45 of the Civil Procedural Code of the Kyrgyz Republic provides for the grounds for the Prosecutor to apply to the court with a statement in defense of the rights, freedoms and legally protected interests of the citizen; this application can be made by the Prosecutor only at the request of the interested person, if it is due to the legitimate reasons (health reasons, age, incapacity and other reasons) cannot go to the court. Moreover, in accordance with paragraph 3 of Article 132 of the of Civil Procedural Code of the Kyrgyz Republic, the Prosecutor in the application must substantiate the impossibility of presenting the claim by the citizen himself and the document must be attached to the application, confirming the consent to file the claim with the court, except for cases of filing in the interests of the incompetent person. A statement in defense of the interests of incapacitated citizens, as well as state or public interests, may be brought by the prosecutor, regardless of the request of the person concerned. This is a general legal principle.

Article 4 of the Law states that in cases of information dissemination discrediting the honor and dignity of the President of the Kyrgyz Republic, the Prosecutor General of the Kyrgyz Republic is obliged to apply to the court on behalf of the President of the Kyrgyz Republic for the protection of his honor and dignity, but only if other measures of prosecutorial response failed to bring the necessary results. In the cases before us, the Prosecutor General did not take any preliminary measures of the prosecutor's response, but decided to apply immediately to the judicial authorities.

compensation amount for moral damage caused to the honor and dignity of the President was determined from 3 million to 10 million. It is not clear from what calculations the plaintiff proceeded in the person of the Prosecutor General, estimating the honor and dignity of the President in some cases 3 million KGS, in others 10 million KGS. Why not 5 million, not 7 million or can 1 KGS?

Further, Article 4 of the Law in question states that the Prosecutor General is recognized as the legal representative of the President, he enjoys all the rights of the plaintiff, the defendant, the victim, as provided for by procedural legislation. However, Article 2 of the Civil Procedural Code of the Kyrgyz Republic establishes an exhaustive circle of persons who can be legal representatives - parents, adoptive parents, guardians, trustees, as well as representatives of organizations and individuals in whose care the person participating in the case is in charge. And according to the Criminal Procedural Code of the Kyrgyz Republic, the Prosecutor General cannot be a victim instead of the President in criminal cases, where the President himself is harmed.

Thus, when making claims, the reference to Article 4 of the Law of the Kyrgyz Republic "On Guarantees of the Operation of the President of the Kyrgyz Republic" made by the General Prosecutor's Office is illegal and does not meet the requirements of the Constitution of the Kyrgyz Republic and the Civil Procedural Code of the Kyrgyz Republic.

Danger of the above described actions is that the Prosecutor's Office from the body overseeing legality (in accordance with Article 104 of the Constitution of the KR) actually turns into a punitive body that censors and serves the interests of the President of the Kyrgyz Republic, whose honor protection has been elevated to the rank of state policy. At the same time, unlawful actions of the General Prosecutor's Office are not suppressed by the courts.

- Firstly, the courts are elementary, according to Article 136 of the Civil Procedural Code of the Kyrgyz Republic on the grounds described above, had to return the statements of claim.
- Secondly, even if these claims were accepted for consideration, according to Part 3 of Article 38 of the Civil Procedure Code of the KR, the President should have been notified of the process that has arisen, in which he must participate as a plaintiff.

The above mandatory procedural rules on the part of the courts have not been fulfilled for any of the listed cases.

In conclusion, we will sum up the existing judicial remedies in defamation cases.[63]

Presence of a remedy means the existence of arguments, the successful bringing of which in court will absolve the defendant from responsibility for an act which in other circumstances was recognized as unlawful.

[63]Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf and Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/data/files/pdfs/tools/defamation-abc-russian.pdf.

✓ ***Truthfulness of information*** [64]

A person can be convicted of defamation only if he is proved to have disclosed untrue information. In other words, if the statement made is true, the person who has expressed this truth is not liable for defamation. The basis of this order is the following logic. The law on defamation should protect a person against illegal attacks on his reputation, and not abstractly defend a good reputation, which, perhaps, is not deserved. Many people do not like when in the newspapers there is unpleasant information about them, but the law should not presuppose a claim for damages in return. At the same time, if truthful information about the person whose personal life has been disclosed can individually sue for interference into his private life. Practice shows that the requirement of the law that the defendant should prove the truthfulness of his judgment generates self-censorship, as a result of which citizens begin to guard against expressing their opinion not because of their fidelity or infidelity, but because they fear that they will not be able to prove the justice of their opinion in court - and that the defense in court on the defamation suit, besides, will cost them a considerable amount.

✓ ***Evaluation judgments*** [65]

An analysis of what is a fact and what is a personal, estimated opinion is the most difficult in defamation cases. It was noted above that the value judgment does not operate with facts and therefore its truthfulness or unreliability is not subject to proof; Therefore, the law cannot decide who is right in his opinion and who is not, and should allow all citizens to express their own opinion. Of course, there is a risk that someone will abuse this freedom and take to express opinions that are offensive to very many individuals, but this risk is much less than the hidden danger when the authorities decide which opinions are acceptable and which are not. It is not always easy to understand what a fact is, and what is a personal, value judgment opinion. If the burden of proof lies with the defendant, he must prove that he, for his part, simply "assessed" the plaintiff - and the latter, in turn, will convince the court that he disputes the facts, not the value judgment. Yes, if an opinion is expressed that someone is "good" and someone is "bad", then this is undoubtedly the assessment, and no more; and what about the statement that someone is a fraud? Sometimes in the expressed opinion, it is possible to find elements perceived, literally, as facts, but they were conceived, nevertheless, as a means of expressing an appraising judgment. Examples of such rhetorical techniques, such as jokes, figures of speech or artistic exaggeration. It is clear that the courts always have to analyze the context of the opinion expressed in order to determine what is to be interpreted as a statement of fact and what an appraisal judgment is.

✓ ***Justification of publicity*** [66]

Even when a publicly disclosed fact on a matter of general interest turned out to be untrue, the defendant in the defamation case can assert in his defense that he acted reasonably, in good faith and unintentionally. This means that, under the circumstances, the distribution by the

[64] Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/.

[65] See: Ibid.

[66] Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/ and Freedom of expression, legislation on the media and defamation. Reference and training manual for Europe October, 2016. MLDI, IPI - available at https://ipi.media/wp-content/uploads/2017/01/FoE-MediaLaw-Defamation-RUS_WEB.pdf.

defendant of the contested materials by the method used and in the form given to them was quite acceptable. The main purpose of this remedy is to provide the media with the fullness of the possibilities to fulfill their responsibilities for properly informing citizens. When events begins to happen, information about which becomes important news for the public, journalists cannot always afford to wait and not give material to newspapers or on the air until they fully certify that every fact is fully confirmed. Even the best journalists allow unintentional mistakes, and bringing them to account for this would mean not only a "Damocles' sword" over the profession, but also depriving all citizens of the information they need so timely. The argument of the publicity validity protects those who balance between the need for information and the need to avoid damage to reputation, and allows bringing to account those who do not find the proper balance. The reason for publicity is often protecting the mass media representatives, but it should be available as a remedy to everyone else - after all, it may well happen that the facts that are not absolutely true under appropriate circumstances will be justifiably and without malicious intent publicized by scientists or activists of social movements. Therefore, if the publication is justified, it can be considered reasonable, even if it is not entirely true. Criteria for assessing the validity may be, for example, the following:

- journalist made a diligent effort to verify the truth of the statement and believed that it was true;
- defamation statements were contained in the official report - and the journalist is not obliged to verify the reliability of all statements contained in the report;
- topic was of public interest.

✓ ***Transfer of words of other persons*** [67]

No one shall be held liable for reporting defamatory statements by other persons or for the reproduction of what others have said, but with the following three conditions:

- quote was said during the discussion of a socially significant issue,
- person who repeated other people's words, refrained from their own approval of them, whenever someone conveys the words of other persons, it is clearly indicated that these words originally belong to someone else.

This means that the media, whose duty it is to inform the public, can broadcast someone's statements damaging the reputation of others, yet journalists cannot be asked to always distance themselves from such statements or verify the veracity of every statement. This would extremely complicate the work of the mass media and would harm the proper flow of information to citizens.

✓ ***Unintentional actions*** [68]

The argument of unintentionally actions is recognized in cases when someone disseminates defamatory information or promotes its publicity without any intent, without committing any negligent actions and not being involved in the information disseminated. This, in particular, refers to the staff and support staff of the publishing organization, which are involved in the process of its production or distribution, but do not have the slightest relation to the content of the materials. In the modern context, similar considerations apply to Internet service providers who post and transmit all kinds of materials, but do not ask questions about the defamatory character of such materials, which is the prerogative of the courts. Otherwise, Internet

[67] Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/.

[68] Briefly about defamation. Basic concepts of legislation on the protection of reputation. A manual for activists. Article 19. November, 2006. - available at https://www.article19.org/.

providers would be forced to censor at their discretion, which cannot be considered acceptable and will serve as a convincing argument in their favor in court.

3.3. REGULATION OF FREEDOM OF SPEECH ON THE INTERNET

Review of legislation and description of the problem

For millions of people in the early 21st century, the Internet has become an important source of information about the surrounding reality. In 1998 in the world there were only about 150 million Internet users. Today, the audience of the global computer network exceeds 3 billion people.[69] Before the year of 2000 the mass media network was not the object of close attention of researchers. In recent years, the influence of online publications on the audience, the factors of their effectiveness, the comparative analysis of network and printed publications, and the development tendencies are being actively studied.

The international community has formulated principles that guarantee freedom of the Internet as a medium of information and provide for comprehensive legislative and institutional actions aimed at protecting the freedom of expression on the Internet.[70] At the core of all legislation relating to the Internet, constitutional values, such as freedom of speech and its interpretation in international jurisprudence, must be provided for. The Internet itself does not guarantee freedom of opinion and expression. The Internet is, first and foremost, technology, a network that provides communication. Freedom of expression on the Internet should be protected, as elsewhere, by the rules of law, and not by self-regulation or codes of conduct. Preliminary censorship, arbitrary control or unreasonable restrictions on the content, transmission and dissemination of the information are inadmissible.[71]

The presence of the mass media on the Internet includes traditional media websites, and there are also websites of individual citizens (bloggers) reporting or expressing their views on personal websites. Speaking about guarantees of freedom of the mass media, one must understand that it is not only the freedom of traditional media, but also the right of an ordinary citizen to freely express his views through his own website.

The Internet since its inception has provided people from different continents with an uninterrupted and unlimited opportunity to exchange information. As a result, attempts have been made in various countries around the world to restrict this freedom and take control over the flow of information. Attempts at the legal regulation of the Internet are being made constantly, somewhere they have been crowned with success, as in Russia[72], for example,

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[69] According to the latest press release of the International Telecommunication Union on July 22, 2016, the number of Internet users in the world is 3.5 billion people, including: China - 731 million, India - 350 million, the USA - 277 million, Japan - 110 Million, Brazil - 110 million, Russia - 87.5 million, Germany - 72 million, Indonesia - 71 million, Nigeria - 70 million, Mexico - 59 million - available at http://www.bizhit.ru.

[70] Declaration of the Committee of Ministers of the Council of Europe on human rights and the rule of law in the information society, CM (2005) 56 final, adopted on May 13, 2005 - available at http://www.ifapcom.ru/files/; Analysis of media legislation of the Republic of Kazakhstan in 2007-2010. - Available at http://medialaw.asia/node/10354.

[71] The Media Freedom Internet Cookbook. Edited by Christian Möller and Arno Amour http://www.osce.org/ru/fom/13837?download=true.

[72] The law of the Russian Federation "On the mass media" is available at http://www.consultant.ru/document, Article 2: ".. **the mass media outlets mean** a periodical, a network publication, a television channel, a radio channel, a television program, a radio program, video program, newsreel program, other form of periodic dissemination of mass

disputes have not ceased for years, for example, in Kyrgyzstan. Attempts to legislatively "format" the Internet, in Kyrgyzstan, continue to this day, beginning with the end of 2000.

First attempt was made **in November 2000**, when the Government of the Kyrgyz Republic proposed to expand the list of mass media and to include as "the media transmitted over computer networks intended for an unlimited number of persons"[73]. **In 2007**, the members of the parliament proposed to give Internet resources the status of the mass media - the initiators were representatives of the Ak-Zhol faction. The bill was rejected by the efforts of the civil society and journalists. The next time the question was raised **in July 2009**, amendments to the law on mass media were again initiated by people's parliamentarians, they proposed to subordinate the Law of the KR "On Mass Media": "other forms of dissemination of mass information intended for public distribution and issued by state bodies, news agencies, political, public and other organizations, private individuals "," other information dissemination forms of information, including through information networks".[74] **At the end of 2014**, the Ministry of Justice of Kyrgyzstan initiated a similar bill - the agency offered to register online publications as mass media, so that they received "all the rights" that the mass media have in the country. But, soon this amendment was withdrawn after criticism of the media community and human rights activists at the first public hearings.

Initiators of the draft laws explained that the issue of information security is urgent for Kyrgyzstan "and therefore it is necessary to introduce control over information disseminated on Internet sites that is contrary to the ideology of our state, where judgments are expressed, proposals that incite inter-regional, inter-confessional and inter-ethnic discord are introduced".[75]

In the opinion of the media community, in fact, all these "noble" and full of worries for the country explanations of the initiators, the above mentioned bills, are just a cover for the true reason: the desire to stop the criticism of the activities of state officials and parliamentarians gaining momentum on the Internet. All attempts at legislative regulation of the Internet space have received a negative assessment of Public and international organizations. According to media experts, "such a complex issue, which requires careful consideration not only from media experts, human rights defenders, representatives of the state bodies, but also IT workers, should not be resolved without the participation of all interested parties. In this issue, there should be a competent examination, an assessment of risks and consequences".[76]

Last attempt to somehow "drive" the Internet in certain frames, was recently undertaken by the members of the parliament of Jogorku Kenesh A. Jamangulov, A. Omurbekova and D. Bekeshov. In February this year, for public discussion, amendments were made to the Code on Administrative Liability of the KR and the Law "On Informatization and Electronic Governance". In the bill in particular, the rights and duties of bloggers, the features of

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information under a permanent name; **under network publication** a site in the information and telecommunications network "Internet" is meant, registered as a mass media outlet in accordance with this Law;..»

[73]Legal environment for the development and activities of the media in the Kyrgyz Republic. Alagushev A., Alisheva N. - Bishkek, 2010. - available at http://www.media.kg.

[74]See: Ibid..

[75]Toralieva G. Media Development in Kyrgyzstan - Trends of 2008. Bishkek, 2008. - available at http://www.centrasia.ru/newsA.php?st=1222064940 and Legal environment for the development and activities of the media in the Kyrgyz Republic. Alagushev A., Alisheva N. - Bishkek, 2010. - available at http://www.media.kg.

[76]Legal environment for the development and activities of the media in the Kyrgyz Republic. Alagushev A., Alisheva N. - Bishkek, 2010. - available at http://www.media.kg.

disseminating information by the news aggregator, the procedure for limiting access to the information resource, and others were written. In a certificate of justification for this bill, it was said that "recently there has been a trend in various Internet resources, including social networks, to post information without checking for consistency of reality. Any attempts by the state to ensure the dissemination of objective information by the public are perceived as a restriction on freedom of speech." The initiators also intended to "streamline the activities of Internet resources that post news and socially important events, whose activities are not equated with the status of the media." At the same time, Deputy D. Bekeshev stressed the news agency "24.kg" that the draft law "will not touch" the news agencies: "then the amendments would be made to the law on the mass media."[77] After the criticism of the media community and human rights defenders, this bill was withdrawn. But for how long?

According to the media expert G.Toraliyeva, the bill on bloggers is an indicator of the mood of the authorities' representatives, members of the parliament ... The main trouble for the authors of the bill is that the law they initiate does not have enforcement mechanisms and is not backed by resources. The media expert asks the question "is there any means and resources for the state to track all the posts on social networks, keep bloggers' lists, count the number of their subscribers. How will they force bloggers to provide this data? How to avoid falsification of the data? ... There are more questions than answers ... Throughout the year, MPies themselves, or on orders, come up with options for "fighting" with so-called bloggers, people whose opinions they listen to, by civil society leaders. Traditional mass media, those that are under the influence of the presidential apparatus, do not pose a threat. Independent media mainly observe laws and journalistic ethics, materials are submitted in a balanced way, although they are also attacked by the authorities, some are filled with lawsuits, etc. There are bloggers who freely express their opinion. They can distribute information that other media cannot publish for various reasons ... Authorities who say that Internet content is regulated by laws around the world, forget to say how one of the basic human rights is protected there - freedom of speech ... "- believes the media expert.[78]

To date, there are no other mass media concepts and definitions in Kyrgyzstan, other than those specified in Article 1 of the Law of the Kyrgyz Republic "On Mass Media". According to this article, the media "includes newspapers, magazines, attachments to them, almanacs, books, bulletins, one-time publications intended for public distribution, having a permanent title, as well as television and radio broadcasting, film and video studios, audio-visual recordings and programs produced by government agencies, news agencies, political, public and other organizations, private individuals ". The Internet does not apply to the mass media.

At the same time, it is necessary to understand that legal uncertainty regarding information sites does not exempt them from liability before the law. "Not spreading the action of law on the mass media to the Internet, in no way means that relations in the Internet are not regulated by other laws. On the contrary, the content of information resources falls within the scope of national legislation, for example, regarding the defamation dissemination, disclosure of state secrets, pornography and other information protected by law, etc. The effect of these laws applies to all persons, regardless of whether they are journalists, editors, manufacturers, media distributors or not, "media experts explain.[79]

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[77]Available at http://24.kg/obschestvo/46536/ .
[78]Available http://rus.azattyk.org/a/28353037.html.
[79]Legal environment for the development and activities of the media in the Kyrgyz Republic. Alagushev A., Alisheva N. - Bishkek, 2010. - available at http://www.media.kg.

Law enforcement practice

What practical methods do government agencies try to use to influence the Internet environment in Kyrgyzstan?
One of the methods is blocking sites.

Here are just some examples:
February, 2012 - access to the website of the Fergana news agency (fergana.ru) is blocked. The basis was the Resolution of the KR of June 9, 2011 № 567-V "On the information of the temporary Parliament Commission on the identification and investigation of the circumstances and conditions that led to the tragic events that occurred in the republic in April-June 2010 and giving them a political assessment." In paragraph 30 of the document, the Parliament instructed the General Prosecutor Office and the Ministry of Justice "to take measures to block the Ferghana.ru website on the information space of the republic."[80] The actions of the Parliament authorizing access restrictions were criticized by the OSCE Representative on Freedom of the Mass Media. In a statement on the restriction imposed on February 27, 2012, it was particularly emphasized that the measures of influence were applied out of court, to the resource that was engaged in disseminating news in the political sphere. This created a significant threat to freedom of access to information in the country. In a letter to the speaker of the Parliament, Mrs. Mijatovic noted that the parliament should pass laws or resolutions that are not aimed at restricting the freedom of the mass media, including online, but, on the contrary, guarantee that the Internet remains a free platform for exchanging information and ideas.[81] Website remained blocked until April 2013..

December, 2014 - the popular resource www.kloop.kg is blocked. The basis was the material posted on the site on November 24 under the title "Video of the Islamic State": children from Kazakhstan threaten to kill infidels." "Without referring to the Public Fund Kloop Media, on which the video was posted, the 10th Senior Department of the Ministry of Interior of the Kyrgyz Republic sent documents to the General Prosecutor Office on November 25, which issued an order to the State Agency on Communications to take appropriate measures to further restrict access to" extremist" material. On December 10, the State Agency of Communications sent letters to the providers that they restrict access to the video posted on the site Kloop.kg. On December 11, users of the social network facebook.com began to inform about the lack of access to the site www.kloop.kg through the provider "Aknet"[82] Afterwards, after numerous discussions initiated by representatives of civil society, the State Communications Agency of the Kyrgyz Republic withdrew its instruction..

July, 2016 - the site maalymat.kg was blocked by the decision of bailiffs and an Internet provider. Earlier, the Alamudunsky District Court of the Chui Oblast ruled that journalist D. Orunbekov was to pay 2 million KGS to the President A. Atambaev for infringing on honor and dignity. In his article on the June 2010 events in the south of the country, he pointed to the guilt of members of the interim government.[83]

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[80] Available at http://cbd.minjust.gov.kg/act/view/ru-ru/70597.
[81] Development of media law in the Kyrgyz Republic. Alisheva N., Golovanov D., Usenova B. - Bishkek, 2015. - available at http://www.media.kg.
[82] See: Ibid.
[83] Available at http://www.24.kg/obschestvo/34818, http://zanoza.kg/doc/341798_nalojen_arest_na_sayt_maalymat.kg_prinadlejashiy_dayyrbeky_orynbekovy.html .

February, 2017 - The "September" TV channel was disconnected from digital broadcasting for 4 hours. At 03.00 the second multiplex of digital television was disconnected, at 7.00 it was restored. This is reported on his Facebook page by the head of the "September" TV channel K.Urumkanova. The second multiplex of digital television includes 21 television channels throughout the country, including the opposition "September". Digital broadcasting was turned off at the same time as they detained opposition leader Omurbek Tekebaev. "At three o'clock in the morning, when the operation to detain Omurbek Tekebaev started, the signal of the September channel was gone. But due to the fact that channel is in the second multiplex with 21 more channels, and they were all disconnected as well. I think that at seven in the morning the authorities had to resume the signal, because other TV channels were missing, "K.Urumkanova reported to Azattyk.[84]

March, 2017 - as part of the consideration of civil cases on claims filed in defense of the interests of the President of the Kyrgyz Republic and the SDPK, the judiciary made determinations on blocking access to certain articles posted on the websites of the news agency 24.kg, Azattyk Media (Site azattyk.org) and Public Foundation "ProMedia" (site Zanoza.kg). Restriction to access was made in order to secure the claim.

As we can see, only in one case of all the listed above, the blocking was carried out according to the judicial decision.

To date, the national legislation does not contain regulations directly on the procedure for blocking Internet resources. Since blocking a resource can mean limiting the constitutional right to freedom of information dissemination, as well as restricting the information rights of citizens, it can be established solely by law, i.e. there should be prescribed procedure, the rights of administrators, owners of resources should be regulated, mechanisms for protecting their interests and other issues are provided.

The Plenum Resolution of the Supreme Court of the KR (paragraph 13) of February 13, 2015, specifies the right of the court in accordance with Article 141 of the Civil Procedure Code, at the request of the parties, to make a determination against the owner of the information resource on the Internet on the prohibition, for the period of the claim consideration, of the disputed information material dissemination. In doing so, when making a ruling by the court, all necessary measures must be taken to ensure that the placement of other information materials of the information resource is not limited in connection with the implementation of such a definition.

[84] Available at http://zanoza.kg/353129, http://medialaw.kg/2017/02/26.

CONCLUSIONS AND RECOMMENDATIONS

I. Summing up the above mentioned arguments and the events taking place in Kyrgyzstan, it can be stated that the situation with the implementation and provision of freedom of speech on the part of the state is deteriorating and causes serious concern. Multiple facts of violations of the rights of journalists in the performance of their professional duties (for example, the detention of journalists covering various rallies and marches, mass involvement of the media and journalists for posting an interview or third-party opinions as defendants in disputes over the protection of honor and dignity of officials and politicians) have a negative impact on the society as a whole and force the professional community of journalists to resort to rigid self-censorship. As it is known, in November 2017 in Kyrgyzstan, the election of the President of the Kyrgyz Republic is expected. In some speeches A. Atambaev stated that the mass media form public opinion and can significantly affect the election results. In our opinion, the "attack" launched by the Prosecutor's office in March 2017 on uncontrolled media can be regarded as purposeful and prepared actions to clean up the information space. Firstly, after the public claims to a number of mass media voiced by the President of the Kyrgyz Republic at various official events, the General Prosecutor's Office begins to bring suits in court precisely against the media that were announced. Secondly, despite the existence of procedures and procedural violations, the courts accept these suits for consideration. In this case, the courts reject all petitions of the defendants to eliminate the procedural violations committed.

II. Despite of the declared status of international treaties in the Constitution of the KR and adopted in accordance with the Constitution, the role of the International Covenant on Civil and Political Rights and other international treaties in the field of human rights and freedoms in the legal system of Kyrgyzstan remains uncertain; in the order established by the law and ratified by the Kyrgyz Parliament.: the provisions of the ICCPR are practically not used by the judicial system and law enforcement agencies in their activities. This makes international human rights treaties ratified by Kyrgyzstan, de jure part of the legal system of the Kyrgyz Republic, and de facto - practically not used in law enforcement practice by courts and other state bodies. The courts, when considering specific cases, do not perceive the ICCPR as an integral part of the legal system of the Kyrgyz Republic and often draw conclusions based on the legal norms laid down in laws and by-laws not listed in accordance with the Constitution of the Kyrgyz Republic and the ICCPR.

III. A brief analysis of the regulatory legal acts governing the activities of the mass media in Kyrgyzstan, presented in this report, shows:

a) today there are three acts containing similar norms (laws on mass media and journalists) regulating in both cases the activity of the media (laws on mass media and television);

b) indicates their relative immutability (over a long period of time, significant changes in legal acts adopted more than 20 years ago have not been made). In general, it is possible that the fact that the rules of the media and journalists' work for a long time established by law remain unchanged or stable, this is a positive factor. The practice of lawmaking in Kyrgyzstan shows that often legislative initiatives are aimed at tightening the rules, this may cause concerns from the professional community. This applies also to the media sphere, all initiatives taken recently by the members of the parliament and the government to amend the Law of KR on Mass Media, has taken for the freedom of the mass media a

restrictive rather than protective potential. But, nevertheless, the rapidly changing world and relations in the mass media require new approaches and new legislative guidelines.

The following trends are typical for the legislative process in Kyrgyzstan:
- the presence in the legislative acts of obsolete and duplicative norms;
- gaps in legal regulation;
- the existence of internal contradictions in the existing law.

As recommendations:

1. Professional community needs to conduct an extended legal analysis of the Law of the Kyrgyz Republic "On the Mass Media" and the Law of the Kyrgyz Republic "On Protection of Professional Activities of a Journalist" in order to prepare proposals for removing provisions that have become obsolete and / or lost its importance due to the legislation development and public relations.

2. Perhaps for more effective application of the norms of legislative acts regulating activity of mass media and journalists, it is necessary to unite existing normative and regulatory acts ("On Mass Media", "On Television and Radio Broadcasting", "On Protection of Professional Activities of Journalists") into a single document.

IV. The reported cases of pressure on the media and journalists shows that in Kyrgyzstan the problem of freedom of speech, freedom of expression is becoming more acute year after year. This is also evidenced by the recent attempts to attract media and journalists to civil-law liability (simultaneously and in a short period of time, the presentation of several "multi-million" lawsuits to various media on defending honor and dignity - see above in the report).

All violations of the mass media rights and journalists that took place in Kyrgyzstan can be called forms of censorship. Journalists cannot feel safe, a culture of fear arises, the direct result of which is self-censorship, which prevents the dissemination of important information. And this has a direct impact not only on the mass media, but on the whole society.

As recommendations:

1. Into the main normative legal act in the field of mass media, which is the Law of the Kyrgyz Republic "On Mass Media", to introduce a clearly defined definition of the concept of "censorship". And, if necessary, the duplication of this definition in all other normative acts. The need for this action is justified by the fact that complex and multidimensional definition of censorship, which exists in the legislation of the Kyrgyz Republic at the moment, does not fully protect the media from all the risks that constitute the essence of this social phenomenon.

We draw attention to the absence of a constitutional norm guaranteeing the prohibition of censorship. The existence in the Constitution of the KR of the norm on prohibition of

censorship would be more significant and more effective in terms of guaranteeing freedom of speech.

According to media experts, "censorship should not only mean the possibility of direct pressure to prevent dissemination of the information, but also indirect influence on the mass media in order to correct their substantive work."

V. Based on the established practice of the ECHR and other international institutions, it follows that the legislation providing responsibility for criticizing the officials, including the president of the country, on the grounds that such criticism was deemed insulting, is incompatible with international standards of freedom of expression of opinion and, in particular, contradicts Article 19 of the ICCPR, to which Kyrgyzstan is a party. In its decisions, the ECHR has repeatedly confirmed that politicians should tolerate not only caustic criticism, but also harsh statements.

With this in mind, and in order to avoid the repetition of the situation in future with participation of the mass media representatives and journalists in the capacity of defendants to defend honor and dignity in the interests of officials, it is necessary to review the provisions of the Law of the Kyrgyz Republic "On guarantees of the activitiy of the President of the Kyrgyz Republic".

As a recommendation:

1. To bring the provisions of the Law in line with the ICCPR, the current Constitution of the Kyrgyz Republic and the norms of the Civil Legislation of the Kyrgyz Republic.

The UN Human Rights Committee, which monitors Kyrgyzstan's compliance with the ICCPR, previously warned Kyrgyzstan of the ambiguity of claims to protect honor and dignity against critical journalists and expressed concern about the availability in Kyrgyzstan's legislation of the rules for protecting the honor and dignity of the President, which are used to initiate such lawsuits.

VI. In the case when a demand for moral damage is claimed along with the demand for the protection of honor, dignity and business reputation, the court resolves these claims in accordance with the norms of the Civil Code of the Kyrgyz Republic and the Plenum Resolution of the Supreme Court of the Kyrgyz Republic of November 4, 2004 "On some issues of court practice on application of the legislation on compensation for moral harm." The issue of the court's determination on the compensation amount for moral damage is of an evaluation nature. This is due to the fact that the current legislation does not contain clear criteria for its definition. As a general rule, the judges make decisions within the limits of the discretion granted to them.

The lack of effective tools for determining the compensation amount for moral harm in the legislation led to a variety of judicial practices in cases of protection of honor, dignity and business reputation, when the compensation for moral damage awarded to the media and journalists varied on a large scale.

As a recommendation:

1. Develop a methodology for determining compensation for moral damage for use by the courts.

LIST OF ABBREVIATIONS

ODIHR	The OSCE Office for Democratic Institutions and Human Rights
UDHR	Universal Declaration of Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Court of Human Rights
JK	Jogorku Kenesh
KR	Kyrgyz Republic
MI	Ministry of Interior
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MJ	Ministry of Justice
NRA	Normative and regulatory acts
NGO	Non-governmental organizations
OSCE	Organization for Security and Cooperation in Europe
BIA	Bodies on Internal Affairs
UN	United Nations
MM	Mass Media
CIS	Commonwealth of Independent States
OHCHR	Office of the High Commissioner for Human Rights
UPR	Universal Periodical Review

GLOSSARY[85]

Accreditation	Procedure for registration of representatives of television and radio broadcasting organizations under state bodies and local self-government bodies, institutions, organizations and enterprises to cover their activities
Journalist	A creative worker who collects information about events occurring in the life of society, collects, analyzes, edit, prepare materials and disseminate information
Law	A normative legal act adopted by the Parliament in the established manner and regulating the most important social relations in the relevant sphere
Personal information (personal data)	Fixed information on a tangible medium about a particular person related to a specific person or that can be identified with a specific person, allowing to identify this person directly or indirectly, by reference to one or more factors specific to his biological, economic, cultural, civil or social identity. Personal data includes biographical and identification data, personal characteristics, information on marital status, financial position, health status and other
Normative legal act	An official document of the established form adopted (published) within the competence of an authorized state agency (official), a local government or by referendum, aimed at establishing, changing or repealing the norms of law (legal norms)
Official documents and messages	Any documents and messages that, in accordance with the procedure established by law, and are issued by state bodies and local self-government bodies
Public speaking	A communication to the public that has been announced directly or through technical means in a place open to free access where there is a significant number of persons not belonging to the usual family circle in an environment that indicates that the message was perceived by the public
The mass media	Newspapers, magazines, supplements to them, almanacs, books, bulletins, one-time publications intended for public distribution with a permanent name, as well as television and radio broadcasting, film and video studios, audio visual recordings and programs produced by state bodies, news agencies, Political, public and other organizations, individuals

[85]See: Law of the Kyrgyz Republic "On mass media", 1992; Law of the Kyrgyz Republic "On protection of professional activities of journalists", 1997; Law of the Kyrgyz Republic "On the official interpretation of the terms" Official Documents and Communications "and" Public Address "in Art. 26 of Law of the Kyrgyz Republic "On mass media", 1998; Law of the Kyrgyz Republic "On informatization and electronic governance", 1999; Law of the Kyrgyz Republic "On the order of coverage of the activities of the Jogorku Kenesh of the Kyrgyz Republic in state media", 2007; Law of the Kyrgyz Republic "On personal information", 2008; Law of the Kyrgyz Republic "On regulatory legal acts of the Kyrgyz Republic", 2009.

USED SOURCES, LITERATURE AND INTERNET RESOURCES

1. Universal Declaration of Human Rights of December 10, 1948;
2. Vienna Convention on the Law of Treaties of May 23, 1969. (Kyrgyz Republic acceded in accordance with Law of the KR of July 5, 1997 No. 49);
3. Declaration of the Committee of Ministers of the Council of Europe on human rights and the rule of law in the information society, CM (2005) 56 final, adopted on 13 May 2005;
4. General comments No. 34. Freedom of opinion and expression. UN Human Rights Committee. (102 session, 2011);
5. International Covenant on Civil and Political Rights of 16 December 1966. (The Kyrgyz Republic acceded to the Resolution of the Jogorku Kenesh of the KR on January 12, 1994, No. 1406-XII);
6. Syracuse Principles of the Interpretation of Restrictions and Derogations from the ICCPR. UN Document E / CN.4 / 1985/4, Annex (1985);

7. Constitution of the Kyrgyz Republic (adopted by referendum (popular vote) on June 27, 2010);
8. Law of the Kyrgyz Republic "On mass media" of July 2, 1992;
9. Law of the Kyrgyz Republic "On protection of professional activities of a journalist" of 5.12.1997;
10. Law of the Kyrgyz Republic "On guarantees and freedom of access to information" of December 5, 1997;
11. Law of the Kyrgyz Republic "On Informatization and Electronic Governance" of October 8, 1999;
12. Law of the Kyrgyz Republic "On international treaties of the Kyrgyz Republic" of 24.04.2014;
13. Law of the Kyrgyz Republic "On access to information under the jurisdiction of state bodies and local self-government bodies of the Kyrgyz Republic" dated December 28, 2006;
14. Law of the Kyrgyz Republic "On Television and Radio Broadcasting" dated June 2, 2008;;
15. Law of the Kyrgyz Republic "On Regulatory Legal Acts of the Kyrgyz Republic" of 20.07.2009
16. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic "On some issues of judicial practice of the application of the legislation on compensation for moral harm" of November 4, 2004;
17. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic "On Judicial Practice for the Resolution of Disputes on the Protection of Honor, Dignity and Business Reputation" dated February 13, № 4;
18. Decision of the Constitutional Chamber of the Supreme Council of the Kyrgyz Republic of 06.11.2013. On the case on verification of the constitutionality of Article 128 of the Criminal Code of the Kyrgyz Republic in connection with the appeal of citizen Madinov, O.K.;
19. Decision of the Constitutional Chamber of the Supreme Council of the Kyrgyz Republic on 14.01.2015. "On the case on the verification of the constitutionality of the Law of the Kyrgyz Republic" On Amending Certain Legislative Acts of the Kyrgyz Republic "of May 17, 2014 No. 68 in connection with the appeal of the association of legal entities" Association of Non-Governmental and Non-Profit Organizations ";
20. Civil Code of the Kyrgyz Republic;
21. Civil Procedure Code of the Kyrgyz Republic;
22. Criminal Code of the Kyrgyz Republic;
23. Criminal Procedure Code of the Kyrgyz Republic;
24. Ethical code of the journalist of Kyrgyzstan. Adopted at the Republican Congress of Journalists on December 8, 2007;

25. Analysis of the legislation on the media of the Republic of Kazakhstan in 2007-2010. - Available at http://medialaw.asia/node/10354;

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27. The safety of journalists - why this is important. The OSCE Representative on Freedom of the Media is available at http://www.osce.org/ru/fom/111063?download=true;
28. Is it safe to work as journalist in Kyrgyzstan? Alisheva N., Lyubeznova N. - Bishkek, 2012. - available at http://www.media.kg;
29. Boer V. M., Paveleva O. G. Information Law: Textbook. Allowance. Part 1; GUAP. - St. Petersburg., 2006. - available at http://lib.sale/pravo-informatsionnoe/informatsionnoe-pravo-boer.html;
30. Bulletin of the Supreme Court of the Kyrgyz Republic - available at http://jogorku.sot.kg/;
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36. History of Kyrgyz journalism. October 28, 2014 - available at http://www.open.kg/about-kyrgyzstan/socio-economic-resources/mass-media/1490;
37. OSCE Commentary on the Draft Law of the Kyrgyz Republic "On Amending Certain Legislative Acts of the Kyrgyz Republic", 2014 - Available at http://www.osce.org/ru/fom/117939?download=true;
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