

Information on violations of the constitutional rights of citizens to access information and freedom of speech, as well as the rights of journalists and the media during a state of emergency in Kyrgyzstan

On March 21, 2020, at the proposal of the Security Council of the Kyrgyz Republic, the Government of the Republic introduced an emergency situation regime on the territory of the country from March 22, 2020 for a period of 1 month due to the situation with the spread of coronavirus in the country.¹

On March 24, 2020 the President of the Kyrgyz Republic Jeenbekov S.Sh. signed a Decree on the introduction of a state of emergency in the territories of Bishkek, Osh, Jalal-Abad, Suzak, Nookat and Kara-Suu regions starting at 08:00 a.m. on March 25, 2020 until 08:00 a.m. April 15, 2020.² The Decree of the President of the Kyrgyz Republic stipulates that this regime is introduced “solely in the interests of protecting the life and health of citizens, their safety and public order, and also in order to prevent the spread of coronavirus infection to other territories of the Kyrgyz Republic”.

All these circumstances set certain restrictions on the professional activities of journalists and the media, as a result of which the rights of citizens to freedom of expression and freedom of access to information are violated. The conditions have been created under which the media cannot fulfil their direct duties to cover publicly significant information and provide citizens with the right to access such information.³ In this regard, the PF Media Policy Institute prepared information on violations of the constitutional rights of citizens to access information and freedom of speech, as well as the rights of journalists and the media during a state of emergency in Kyrgyzstan:

1. Commandant Office for Bishkek city has not developed a procedure for accrediting journalists during a state of emergency

Speaking at the briefing on March 30, 2020, the Commandant of Bishkek stated that he would not conduct accreditation of journalists, justifying it with a need to ensure the safety of the health of journalists. Therefore, journalists will not be able to efficiently work in a state of emergency. The journalistic community and media experts believe that officials are violating the

¹ <https://www.gov.kg/ru/post/s/premer-ministr-mukhammedkalyy-abylgaziev-provel-soveshchanie-po-vvodu-rezhima-chrezvychaynoy-situatsii>

² <http://prezident.kg/ru/arhiv/2020/3/24/>

³ On March 30, the media community of the Kyrgyz Republic expressed extreme concern about some decisions in the framework of eliminating the consequences of the coronavirus pandemic <http://media.kg/news/zayavlenie-media-soobshhestva-prezidentu-kr-premer-ministru-kr-toraga-zhk-kr/>

Constitution. They demanded justification, but the Stab (COVID 19 Task Force) and the Commandant's Office are traditionally silent, ignoring any questions.⁴

These actions violate paragraph 9 of Art. 17 of the Constitutional Law of the Kyrgyz Republic "On the state of emergency", which states that the local commandant must establish a special procedure for accrediting journalists and determine their working conditions in the territory where the state of emergency is imposed. The commandant must issue a document on the accreditation procedure in strict accordance with the norms of the Constitution, laws and international law.

The Office of the Ombudsman drew attention to the fact that the Accreditation Institute is designed to regulate the relationship of the media with organizations acting as sources of information. Therefore, it is unacceptable to violate the norms of the Constitution and laws of the Kyrgyz Republic; the Office of the Ombudsman demanded to urgently develop a special procedure for journalists in the form of an appropriate regulatory act and to bring to the attention of the public that it meets article 17 of the above Constitutional Law.⁵

However, there was no reaction from the Commandant to the speech of the Office of the Ombudsman. The proposed online platform for journalists does not meet the requirements for the introduction of accreditation in accordance with Article 17 of the Constitutional Law of the Kyrgyz Republic "On the state of emergency."

2. The work of the media is not included in the list of permitted activities during a state of emergency

On March 31, 2020, the Republican Stab for Combating Coronavirus published a list of permitted activities during a state of emergency. This list includes permitted activities and movements in the areas of a state of emergency. It should be noted that currently the state of emergency has been introduced in the cities of Bishkek, Osh, Jalal-Abad, as well as in three districts (Suzak, Nookat and Kara-Suu). The rest of the republic is under an emergency situation regime. These legal regimes are regulated by separate laws: the Constitutional Law of the Kyrgyz Republic "On Emergency" and the Law of the Kyrgyz Republic "On Civil Protection".

However, both of these regulatory legal acts do not provide for the restriction or prohibition of media activities during a state of emergency. The relevant norms of laws establish that the work of state bodies in these regimes should be carried out on the principles of legality, publicity and temporality. The Kyrgyz Constitution proclaims the right to freedom of speech and freedom of the press.

Meanwhile, the state has adopted a number of decisions that limit the ability of the media to fulfill their immediate responsibility of informing the public about the current situation. Thus, the basic provisions of the Constitution were violated, where any restriction of rights and freedoms is allowed only on the basis of law. Moreover, the objectives of such restrictions are strictly limited to: protecting national security and public order, protecting the health and

⁴ https://24.kg/obschestvo/148706_ogranicheniya_dlya_jurnalistov_vusloviyah_rejima_chp_kommentarij_ombudsmena/

⁵ https://ombudsman.kg/index.php?option=com_content&view=article&id=1550:comment-of-the-institute-of-the-ombudsman-of-the-kyrgyz-republic-to-the-situation-surrounding-media-accreditation-in-connection-with-the-state-of-emergency-in-several-regions-of-the-country&catid=18&Itemid=330&lang=ru

morality of the population, and protecting the rights and freedoms of others. The restrictions imposed should be proportionate to the stated objectives.

3. Journalists and media companies' vehicles are prohibited from traveling through checkpoints

By order of the Command of the city of Bishkek dated March 30, 2020 No. 15 "On additional measures to ensure the state of emergency" in Bishkek for the period of the state of emergency, a ban on the movement of people and personal vehicles around the city was introduced with the exception of certain types of activities. Media activities are not included in the list of exceptions, despite the fact that legislation does not provide for the restriction or prohibition of media activities during a state of emergency. And the Law of the Kyrgyz Republic "On Mass Media" states that a journalist has the right to be present in areas of natural disasters upon presentation of a journalist's certificate.

Media reports of their readiness to independently provide transportation for their employees from the place of residence to the office and back to ensure their safety. However, since the specifics of the work of the TV channels requires access to the control panel to start the broadcast, the employees of the television channels are forced to travel around the city at their own peril and risking to be detained due to the lack of media in the list of permitted activities during the state of emergency. To resolve this problem, television channels need to, at a minimum, ensure the movement of technical personnel, as well as installation, voice-over staff. The Commandant is ignoring this matter.

In this regard, the actions of the Commandant prevent TV channels from carrying out their daily work of informing their audience about current events and creating their own content, as well as the conscientious fulfillment of their contractual obligations to contractors.

4. Limited access to information for non-state media.

Articles 9, 10 of the Law of the Kyrgyz Republic "On guarantees and freedom of access to information" provides an exhaustive list of information that is not subject to provision and dissemination. Introduction of a state of emergency and of an emergency situation regimes do not fall in within this list that restricts provision of information. According to the third paragraph of Article 3 of the above mentioned law, restrictions on access and dissemination of information are established only by law. At the same time, the Law of the Kyrgyz Republic "On Guarantees and Freedom of Access to Information", the Constitutional Law of the Kyrgyz Republic "On the State of Emergency", the Law of the Kyrgyz Republic "On Civil Protection" do not limit the right of citizens to access information in the context of the introduction of a state of emergency and emergency situation regimes.

To date, the authorities involved in combating this epidemic mainly conduct⁶ only briefings at which information is provided unilaterally and in a dosed manner, answers to questions may come after 5-6 days, when this information is no longer relevant. Communications with the press

⁶https://kaktus.media/doc/409695_obiasniaem_popyliarno_v_chem_problema_otsytstviia_akkreditacii_y_smi_i_dostypa_k_informacii.html

services of state bodies, the Republican Stab and the Commandant's offices are not debugged and in most cases are difficult; decision makers are “closed” from journalists.

At the same time, state-run television channels broadcast news with visits to medical facilities, interviews, etc. It is not known on what basis they were granted the right to carry out their activities during the state of emergency. If they have official permission to work in a state of emergency, and legally have a permit, then the City’s Commandant’s office must officially declare who granted them such powers. The commandant did not give a written justification on this issue.

According to the Part 2 of Article 4 of the Law of the Kyrgyz Republic “On Television and Radio Broadcasting”, the main principles of state policy in the field of television and radio broadcasting are the inadmissibility of monopolization of broadcasting organizations by industrial, financial, political and other groups or individuals, as well as the protection of broadcasting organizations from financial and political pressure from financial and political groups, government bodies and local governments.

At the same time, heads of individual editorial offices inform the Media Policy Institute that appeals to the Government Office and the Bishkek Commandant’s Office regarding the lack of working conditions for non-state media do not give a positive result. Representatives of authorized bodies cannot provide an exhaustive answer on which grounds the principle of equality is not respected when creating conditions for the media. On the initiative of the Media Policy Institute, a statement was prepared on behalf of the media community addressed to the President of the Kyrgyz Republic, the Speaker of the Parliament and the Prime Minister, demanding to ensure equal access to information for all media.⁷

Based on the current situation, this chosen approach indicates a violation of the principle of equality when creating the conditions necessary for the activities of the media.

5. The economic problems of non-state media

The economic crisis undermines the ability of independent media to continue their activities, because, on the one hand, advertisers are leaving, and on the other, the media are unable to fulfill their contractual obligations due to the reduction of part of the staff (creative, administrative staff).

At the same time, the demand for objective and versatile news (where there is an alternative point of view of the state) has grown significantly. In conditions when advertisers suspend cooperation and funding falls, and non-state media provide the public with access to classic news: reliable, timely and balanced.

At the same time, state-owned media, having received the right to travel and access to exclusive information from government agencies, have stable guaranteed financing from the state budget through taxes. However, their editorial policy does not meet the needs and interests of the whole society, and journalists do not ask critical questions, being only repeaters of the official position of state bodies.

⁷ <http://media.kg/news/zayavlenie-media-soobshhestva-prezidentu-kr-premer-ministru-kr-toraga-zhk-kr/>

6. Law enforcement authorities mislead the population about the responsibility for disseminating fake news about the coronavirus, and warn them about the initiation of criminal cases under article 344 of the Criminal Code of the Kyrgyz Republic “Knowingly false report of a crime”

Law enforcement authorities mislead the population, indicating responsibility for disseminating false information, and detain individuals for any reports of coronavirus. The media reports⁸ warnings by the law enforcement press centre that the dissemination of inaccurate information by the media during a state of emergency can be qualified under Article 344 of the Criminal Code of the Kyrgyz Republic, which provides liability for “knowingly false reporting of a crime”⁹.

Article 344 of the Criminal Code of the Kyrgyz Republic, being in the chapter “Crimes against the procedural procedure for obtaining evidence”, stipulates reporting to the law enforcement authorities deliberately false information about the commission of a crime, or indicating the commission of a crime by a person who is knowingly innocent. The danger of this crime lies in the fact that it encroaches on the normal and legitimate activities of the courts and law enforcement agencies, and hinders the full and comprehensive investigation and consideration of the criminal case.

As a result of a deliberately false message, law enforcement agencies spend time, effort and money on solving not committed crime, or, if the crime was committed, go on the wrong track, losing the opportunity to find a real criminal, thereby reducing the effectiveness and efficiency of law enforcement agencies. This follows from the reasoning part of the decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated January 14, 2015. “A media report about a crime, giving rise to a criminal case, contributes to the pre-trial and trial proceedings, but the invalidity of such a report cannot be regarded as knowingly false and does not constitute a corpus delicti, as provided for in article 329 of the Criminal Code of the Kyrgyz Republic “Knowingly false report on a crime”¹⁰ (Currently in force as article 344 of the Criminal Code of the Kyrgyz Republic). In each case, the media reported that the State Committee for National Security carried out preventive work, and that the person disseminating the information repented. The deputy of the Jogorku Kenesh of the Kyrgyz Republic E. Surabaldieva criticized such work of the SCNS on 1.04.2020 and evaluated these actions as bullying people for a word.¹¹

Indeed, an increase in the number of messages on social networks disseminating conspiracy theories and other unverified information about the spread of the virus has been observed all over the world. However, solving the problem of false information by referring to non-existent types

⁸ <https://24.kg/proisshestvija/148325/>
<https://24.kg/proisshestvija/148191/>
<http://svodka.akipress.org/news:1606997?from=portal&place=topread&day-ago=2>

⁹⁹ <https://mvd.gov.kg/index.php/rus/mass-media/all-news/item/10363-mvd-prizyvaet-grazhdan-ne-rasprostranyat-lozhnykh-soobshchenij>

¹⁰ Decision in the case on the verification of the constitutionality of the Law of the Kyrgyz Republic “On Amending Certain Legislative Acts of the Kyrgyz Republic” dated May 17, 2014 No. 68 in connection with the appeal of the Association of Legal Entities “Association of Non-Governmental and Non-Profit Organizations” dated January 14, 2015. <http://constpalata.kg/wp-content/uploads/2015/01/Umetalieva-NPO-NKO-111.pdf>

¹¹ <http://svodka.akipress.org/news:1607559/?from=portal&place=nowread&b=2>

of liability is nothing more than a counterproductive approach. With the goal of enhancing the legal culture through misleading, this method leads to the fact that the ignorant of the law instils a misunderstanding of the law, and for those who know, it reduces the credibility of law enforcement.

In order to prevent the spread of rumors and fake information, the Commandant's Office should instead provide professional media access to information. It is this approach that will allow the Commandant to strengthen their work in the fight against disinformation. In the 21st century, every citizen has a telephone and the Internet, and each person becomes a distributor of information, including untested and unreliable one. And this is not always done by people with malicious intent. Very often, this is due to the fact that people are afraid, and there is lack of reliable information. It is private media that provide a platform for open discussions and the free flow of information that are vital for educating the population and, consequently, for a successful global fight against COVID-19. .

7. Changes and additions to some legislative acts in part of liability (dissemination of false information)

President of the Kyrgyz Republic Jeenbekov S.Sh. signed the Law of the Kyrgyz Republic "On Amending Certain Legislative Acts of the Kyrgyz Republic on 03.04.2020" (Criminal Code of the Kyrgyz Republic, Code of the Kyrgyz Republic on Misconduct, Code of the Kyrgyz Republic on Violations)".¹²

The Code of Violations was supplemented by a new article 822, "Actions aimed at breaking the rule of law in a state of emergency." Now, for actions aimed at violating the rule of law, or actions that violate the public order and tranquility of individuals, by disseminating false information, committed in the area where an emergency, a state of emergency or martial law is declared, a fine may be imposed: for individuals - 5,500 soms, for legal entities - 17,000 soms.

The key qualifying attribute of this offense is "dissemination of false information", which in turn should "violate public order and peace of mind" - this is the second qualifying attribute, which, like the first, must be established. The following key points are currently causing concern:

1. The content of the norm determines that when drawing up a protocol of violation, the representative of the authorized body should already have documents stating that the information that the offender has distributed is unreliable. How will the authorized body establish this, and on the basis of what documents?
2. The norm does not provide for the "knowingly" sign, i.e. there is no qualifying sign of intent to commit an offense, since the distributor may in good faith be mistaken and not know about the inaccuracy of the information. It is unclear whether the distributor should commit this violation with or without intent. This imperfection of the norm can also lead to arbitrary decisions in law enforcement practice.
3. In what way and by which criteria the authorized body will determine whether the "public order and peace of citizens" was disturbed?

¹² http://prezident.kg/ru/sobytiya/16451_sekretariat_soveta_bezopasnosti_kirgizskoy_respubliki_sobshaet

4. Cases of this category are considered by the authorized body in the field of internal affairs, that is, the Ministry of Internal Affairs or its structural divisions. Who will determine which of the departments of the internal affairs bodies will deal with this?

Human health depends not only on access to medical care. Access to adequate hazard and safety information is also important. ”¹³ PF “Media Policy Institute” was established in 2005 to promote the constitutional rights of citizens to freedom of speech and access to information in Kyrgyzstan. Certificate on re-registration No. 0000663 of the series of State Re-registration of legal entities dated 02/09/2011. If you have additional questions, write to mpi@media.kg.

¹³ From a joint statement by David Kaye, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Arlem Desir, OSCE Representative on Freedom of the Media, Edison Lanz, Special Rapporteur of the International Committee of the Red Cross on Human Rights and the Red Crescent, March 2020