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CONSTITUTIONAL PROTECTIONS AND CHALLENGES TO FREEDOM OF SPEECH IN KAZAKHSTAN AND TURKIYE AZ ALKOTMÁNYOS VÉDELEM ÉS A SZÓLÁSSZABADSÁG KIHÍVÁSAI KAZAHSZTÁNBAN ÉS TÖRÖKORSZÁGBAN

BAYAN OSHAN¹

ABSZTRAKT ■ Ez a tanulmány a szólásszabadságot érintő jogi kereteket és kihívásokat vizsgálja Kazahsztánban és Törökországban, különös tekintettel az alkotmányjogra, a bírói függetlenségre és a nemzetközi emberi jogi megközelítésekre. Összehasonlítja az alkotmánybíróságok szerepét mindkét országban, kiemelve a működésük közötti különbségeket, valamint azt, hogy milyen mértékben járulnak hozzá a véleménynyilvánítás szabadságának védelméhez. Míg a kazahsztáni Alkotmánybíróság elsősorban tanácsadói szerepet tölt be, addig a török igazságszolgáltatás aktívabban vesz részt a szólásszabadságra vonatkozó jogszabályok értelmezésében és végrehajtásában. A tanulmány áttekinti a legfontosabb jogi reformokat – például azokat, amelyek a bírói függetlenség megerősítését és a nemzetközi együttműködés növelését célozzák –, továbbá elemzi a politikai rezsimek hatását a szólásszabadság védelmére. Emellett kitér a civil társadalom és a média szerepére is a reformok előmozdításában. A tanulmány végül Kazahsztán és Törökország kölcsönös tanulási lehetőségeit vizsgálja, és más országok – például a skandináv modell – sikeres reformjaira támaszkodva javasol megvalósítható megoldásokat a véleménynyilvánítás szabadságának javítására mindkét országban.

KULCSSZAVAK: szólásszabadság, alkotmánybíróságok, bírói függetlenség, politikai rezsimek, emberi jogok

ABSTRACT ■ This article explores the legal frameworks and challenges surrounding freedom of speech in Kazakhstan and Turkey, with a focus on constitutional law, judicial independence, and international human rights perspectives. It compares the roles of the constitutional courts in both countries, highlighting the differences in their functions and the extent of their impact on safeguarding freedom of expression. While Kazakhstan's Constitutional Court primarily serves a consultative role, Turkey's judiciary is more actively involved in interpreting and enforcing laws related to freedom of speech. The study examines key legal reforms, such as

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those aimed at strengthening judicial independence and enhancing international cooperation, and explores the influence of political regimes on the protection of free speech. It also addresses the role of civil society and media in advocating for reforms. The article concludes by considering the potential for mutual learning between Kazakhstan and Turkey, while drawing on examples from other countries with successful reforms, such as the Scandinavian model, to propose actionable solutions for improving freedom of expression in both countries.

KEYWORDS: freedom of speech, constitutional courts, judicial independence, political regimes, human rights

1. INTRODUCTION

In international public law, the most general interpretation of the concept of freedom of speech is given in the UN Universal Declaration of Human Rights, adopted in 1948. Article 19 of the Declaration provides the following definition: *“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.”*² Along with freedom of religion and freedom of assembly, the right to freedom of speech belongs to the third category of rights and freedoms in the Declaration – spiritual, social and political freedoms. This definition presents the concept of freedom of speech in its broadest interpretation, while emphasizing the inextricable link between freedom of speech and freedom of information.

The topic of human rights protection in the context of international relations was further developed in the 1990s. The World Conference on Human Rights, held in Geneva in 1993, resulted in the signing of the Vienna Declaration and Programme of Action.

The concept of freedom of opinion is mentioned in the Vienna Declaration in the context of the eradication of all forms of intolerance (racism, racial discrimination, xenophobia, and others). According to Article 22 of the Declaration, national governments have the right to take measures to combat intolerance by disseminating in society *“the right to freedom of thought, conscience, expression, and religion”*.³

² Universal Declaration of Human Rights: Adopted by UN General Assembly resolution 217 A (III b) on December 10, 1948, United Nations, https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

³ Vienna Declaration and Program of Action: Adopted at the World Conference on Human Rights, Vienna, June 25, 1993, United Nations, https://www.un.org/ru/documents/decl_conv/declarations/viendec93.shtml.

Freedom of speech is mentioned in a slightly different context in the Programme of Action. In accordance with Articles 66 and 67 of the document, freedom of speech is one of the key elements in the formation of a state governed by the rule of law, since it promotes *“the effective participation of the people in the decision-making process”*. In this case, freedom of speech is mentioned as a way for citizens to participate in the political life of countries (for example, through elections).

With the development of digital technologies, there is a need to extend the scope of human rights to the Internet space. Recognizing this need, the UN Internet Governance Forum (IGF) developed a draft Charter of Human Rights and Principles for the Internet in 2009-2010. The purpose of the document is not to expand the list of human rights, but to define new manifestations of each individual right, taking into account the development of digital technologies and their impact. Article 5 of the draft Charter is dedicated to the right to freedom of expression and the dissemination of information on the Internet. In this section, the Charter refers to Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights:

“The right to freedom of expression may be subject to certain restrictions, which must be established by law and be necessary... No restrictions on the right to freedom of opinion are permissible.”⁴

According to the further text of the article, on the Internet, the right to freedom of expression includes the freedom of online protest (the right to use the Internet for organizing and participating in both online and offline protests), freedom from censorship (protection from intimidation, persecution, blocking, and cyberattacks), the right to access information, media freedom (ensuring pluralism), and freedom from hate speech: *“Restrictions under this article must comply with the standards applicable to all limitations on the right to freedom of expression. Such restrictions cannot be aimed at addressing abstract or subjective concerns but only at protecting specific individuals and groups.”*

A similar clarification is found in Article 8 of the draft Charter under the section “Freedom from Defamation”:

“The protection of reputation cannot be used as a basis for restricting freedom of expression beyond the narrow limits of permissible restrictions.”

In the context of international law, special attention should be given to the mention of the Rabat Plan of Action on the prohibition of protection of national, racial, or religious hatred. This plan was developed based on the conclusions of OHCHR conferences and came into effect in 2012. The document provides a

⁴ International Covenant on Civil and Political Rights: Adopted by General Assembly resolution 2200 A (XXI) on December 16, 1966, United Nations, https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

detailed analysis of the relationship between Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) – freedom of expression and the prohibition of incitement to national, racial, and religious hatred, respectively.

The need for such a plan arose due to numerous cases of misuse of either article in judicial decision-making.

The document establishes a high threshold for restricting freedom of expression and introduces a set of criteria for determining incitement to hatred. These include:

- Consideration of the social and political context,
- The speaker's status in relation to their audience,
- The presence of a direct intent to incite hostility toward a specific group or individual,
- The content and form of the speech,
- The degree of impact of the speech,
- The likelihood of causing harm.

The legislation of the European legal space provides a more detailed definition of freedom of expression and its legal limitations. A key feature of European law in this area is the existence of an effective mechanism for the control and regulation of human rights – the European Court of Human Rights (ECtHR).

The case law of the Court offers new perspectives on many conflict-ridden cases, facilitated by regularly updated methodologies for assessing forms of expression and the positions of individuals exercising their right to freedom of speech.

- Article 10 of the European Convention on Human Rights (ECHR) is particularly complex in its relationship with other Convention rights, especially:
- Article 8 (“Right to respect for private and family life”),
- Article 9 (“Freedom of thought, conscience, and religion”),
- Article 17 (“Prohibition of abuse of rights”).⁵

2. CONSTITUTIONAL PROTECTION OF FREEDOM OF SPEECH IN TURKEY

The Constitution of the Republic of Turkey is the fundamental law of the country, defining its legal system, the structure of state power and the fundamental rights and freedoms of citizens. The current Constitution was adopted in 1982 following the military coup of 1980 and replaced the 1961 Constitution. The basic principles of the Constitution include the secular nature of the state, the rule of law, the

⁵ European Convention on Human Rights: Art. 10, https://www.echr.coe.int/documents/convention_rus.pdf.

separation of powers and the republican form of government. It establishes the rights and obligations of citizens, the mechanisms for the operation of state institutions, and the procedure for amending the constitutional text. The Turkish Constitution has been amended several times to adapt the legal system to changing political and social conditions.

The Constitutional Court of Turkey was established in 1961 in accordance with the Constitution of the same year and is the highest body of constitutional review in the country. The Court has the authority to review cases on the conformity of laws and regulations with the Constitution, as well as to rule on individual complaints from citizens regarding violations of their constitutional rights. The Constitutional Court is also competent to consider requests from state bodies for interpretation of the Constitution, as well as to issue decisions on the dissolution of political parties if they violate constitutional principles. The decisions of the Court are final and binding, making it an important element of the system of checks and balances in Turkey.⁶

The Constitutional Court consists of 15 judges appointed by the President of the country, the Parliament and various courts. The Court hears cases in a plenary session or in separate commissions. The main tasks of the Court are to protect the supremacy of the Constitution, ensure respect for the rights of citizens and control the actions of the legislative and executive authorities in accordance with constitutional norms. The Constitutional Court of Turkey plays an important role in ensuring law and order and the stability of the legal system of the country.

The Constitution of the Republic of Turkey enshrines guarantees of freedom of expression, which indicates the formal recognition of this right as one of the fundamental ones in a democratic society. In accordance with Article 26 of the Constitution, every citizen has the right to express his thoughts and opinions orally, in writing or through any other media. However, this right is not absolute and may be limited in order to protect national security, public order, the territorial integrity of the state, prevent crime, protect health and morals, and protect the reputation or rights of others. Freedom of expression in Turkey is thus restricted by a number of legal provisions aimed at ensuring state interests and social stability.⁷ Restrictions on freedom of expression are particularly evident in criminal law. In particular, Article 301 of the Turkish Penal Code criminalizes “*insulting the Turkish nation, the Republic of Turkey or state institutions*”, which makes it possible to prosecute individuals whose statements criticize the official policies

⁶ FREDERICK SCHAUER: *Çfade Özgürlüğü*. Trans. M. Bahattin Seçilmişoğlu. Ankara, Liberal Düşünce Topluluğu, 2002.

⁷ H. DURAN: İfade Özgürlüğü ve Türkiye. *Selçuk Üniversitesi Hukuk Fakültesi Dergisi*, 2006 (1), 69.

or historical heritage of the country.⁸ In addition, Article 312 of the Criminal Code punishes public statements that promote hostility and hatred based on class, race or religion, which is also used in judicial practice to restrict freedom of expression. Further pressure on expression is exerted by the Anti-Terrorism Law, which prohibits any propaganda that can be interpreted as supporting terrorist organisations, often resulting in the prosecution of journalists and activists.⁹

One of the key aspects of the examination of freedom of expression in Turkey is the practice of the European Court of Human Rights (ECtHR), which has repeatedly ruled on cases concerning violations of Article 10 of the European Convention on Human Rights. Among the most significant cases addressing this issue are *Şener v. Turkey*, *Polat v. Turkey* and *Ceylan v. Turkey*.

In *Şener v. Turkey*, the applicant, a magazine editor, was convicted of publishing an article that criticised the Turkish government's policy on the Kurdish issue. The Turkish national courts considered the publication to be a threat to national security and convicted the applicant of promoting separatism. However, the ECtHR ruled that the penalty imposed violated Article 10 of the Convention, stressing that critical speech, even if it concerns sensitive political topics, must be protected under freedom of expression. The Court noted that criminal penalties for such publications have a chilling effect on journalism and public debate. In *Polat v. Turkey*, the applicant was convicted of publishing a book discussing cultural and historical issues related to the Kurdish population. The Turkish authorities considered the book to be extremist material, threatening public order. The ECtHR found that the applicant's conviction was not consistent with the principle of necessity in a democratic society, since the state had failed to demonstrate an imminent threat to public safety. The Court stressed that freedom of expression includes the protection of not only popular and neutral views, but also opinions that are likely to shock or disturb the authorities.

The case of *Ceylan v. Turkey* concerned the conviction of a trade union leader who published a statement criticizing the socio-economic policies of the Turkish state. The statement contained expressions condemning military operations against the Kurdish population. The domestic courts regarded the publication as incitement to hatred and convicted the applicant. The ECtHR found this conviction to be a violation of Article 10, stating that criticism of government actions is an important part of democratic discourse, and criminalizing such statements constitutes a disproportionate restriction on freedom of expression. In summary, the analysis of these cases shows that the ECtHR has consistently protected

⁸ Ibid. 70.

⁹ Ibid. 73.

the right to freedom of expression in the Turkish context, particularly when it comes to political criticism and discussion of the Kurdish issue. The Court has emphasized that freedom of expression is a fundamental element of a democratic society and that state interference must be strictly justified and proportionate. These decisions confirm that the restrictions applied in Turkey often do not comply with the standards of the European Convention, which creates the basis for the need for legal reforms in the area of freedom of expression. Censorship and control of the media also remain significant challenges to freedom of expression in Turkey. State authorities have broad powers to regulate the press, which allows them to restrict independent media and online platforms. For example, in 2006, Turkey passed a law allowing the blocking of websites containing “anti-state” material, which has led to the temporary or permanent blocking of numerous Internet resources, including YouTube and Twitter. In addition, laws restricting access to information create additional barriers to the free dissemination of opinions, especially in conditions of political instability and increased control over opposition views. Thus, despite the constitutional guarantees of freedom of speech, significant legislative and institutional restrictions remain in Turkey that impede the full implementation of this right. Criminal prosecution for expressing critical opinions, strict Internet censorship and control over the media demonstrate the complexity of the situation in which citizens and journalists who seek to freely express their views find themselves. An analysis of judicial practice, as well as international norms, allows us to conclude that the further development of freedom of speech in Turkey requires legislative reforms aimed at bringing national legislation into line with international human rights standards.

3. CONSTITUTIONAL PROTECTION OF FREEDOM OF SPEECH IN KAZAKHSTAN

The Constitution of the Republic of Kazakhstan is the main legal act that defines the legal system of the state and enshrines the fundamental rights and freedoms of citizens. Adopted on August 30, 1995, by referendum, the Constitution symbolizes Kazakhstan’s transition to independence and sovereignty after the collapse of the Soviet Union. This document became the basis for the formation of a legal state and state structure, ensuring political and civil rights, including freedom of speech, as an integral part of democracy. Article 20 of the Constitution of the Republic of Kazakhstan states that everyone has the right to freedom of thought, conscience and expression. It guarantees the freedom to seek, receive, transmit and disseminate information by any legal means. However, despite this, there are a number of restrictions provided by law regarding the protection

of public order, security, and the prevention of the dissemination of extremist and violent materials. The Constitution of Kazakhstan also proclaims the republic a parliamentary democracy with a presidential form of government, which influences the development of judicial institutions and mechanisms for the protection of citizens' rights. Until 2017, the function of monitoring the constitutionality of laws and regulations in Kazakhstan was performed by the Constitutional Council, established in 1995. This body was authorized to review laws for compliance with the Constitution and consider requests on issues of the constitutionality of acts concerning the rights and freedoms of citizens. The Constitutional Council did not have the authority to individually appeal to citizens, and its decisions were advisory in nature. However, in 2017, the Constitutional Court was established in Kazakhstan, which significantly expanded the possibilities for protecting constitutional rights, including the ability to file individual complaints about the violation of the rights and freedoms of citizens. The Constitutional Court began to play a more active role in protecting freedom of speech and other rights, ensuring more independent judicial practice in this area. The Constitutional Court of the Republic of Kazakhstan consists of 7 judges who are appointed by the President of the Republic of Kazakhstan with the consent of the Senate of the Parliament. The term of office of judges of the Constitutional Court is 6 years, and they can be re-elected. The Court plays an important role in ensuring that laws and other regulations comply with the Constitution and in protecting citizens' rights, including the right to freedom of expression. However, despite the existence of this institution, human rights organizations often criticize its limited ability to protect freedom of expression and independent journalism. The Constitutional Court does not always actively participate in proceedings on cases related to restrictions on freedom of speech, which sometimes leads to ineffective protection of citizens' rights. The legal framework governing freedom of speech in Kazakhstan includes not only the provisions of the Constitution, but also many other legislative acts, such as the laws on the media, on defamation, on combating extremism and inciting social hatred. Laws related to the media often use broad and vague language, which allows the authorities to restrict freedom of speech under the pretext of ensuring public order and safety. For example, in 2018, a law was passed requiring Internet companies to filter information distributed online, giving the state additional leverage to control digital content. While these laws may be intended to prevent the dissemination of dangerous or extremist material, they are often used to restrict freedom of expression, particularly when it comes to criticism of the government. Kazakhstan is also a party to a number of international treaties and agreements that set standards for protecting freedom of expression, including the

International Covenant on Civil and Political Rights, which Kazakhstan signed in 2006. Under the Covenant, Kazakhstan is obligated to abide by international standards for freedom of expression, but in practice, international organizations such as Human Rights Watch and Amnesty International have noted that laws restricting freedom of expression in Kazakhstan contradict these commitments.

Thus, although the Constitution of Kazakhstan proclaims the right to freedom of expression, the real situation in the country shows the presence of many legal and institutional obstacles to the full implementation of this right. The main problems are related to legislative restrictions, judicial practice and control over the media and the Internet space. This article will consider the legal basis for freedom of speech in Kazakhstan, including an analysis of the role of the Constitutional Court, the practice of applying laws, as well as the challenges faced by freedom of speech in the context of existing legal regulation. Freedom of speech in Kazakhstan, despite its enshrined in the Constitution, faces serious challenges in real practice. Government agencies actively regulate the information space through laws and censorship practices, which limits opportunities for free expression and criticism of the authorities. Let us consider the main aspects that hinder the full implementation of this right: government regulations and censorship, criminal prosecution for statements, control over the media and digital restrictions, as well as cases where journalists and activists face legal consequences for their activities.

3.1. Government Regulation and Censorship

Government censorship in Kazakhstan remains an important instrument of control over the information space. Despite legislative guarantees of freedom of expression, various forms of control over the media and Internet resources limit the ability of citizens to criticize the authorities. Laws regulating the media often become the basis for state interference in editorial independence. Particular attention should be paid to the law on “digital sovereignty” adopted in 2020, which obliged Internet companies to store user data in the country and block “dangerous content”. This legally legitimized the expansion of state control over the Internet, which threatens freedom of speech in the virtual sphere.¹⁰ Thus, through this law, the authorities can block access to information that criticizes the government, as well as restrict freedom of expression on the Internet. Criminal prosecution for speech (defamation, extremism laws).

¹⁰ NORA WEBB WILLIAMS – MARGARET HANSON: Captured Courts and Legitimized Autocrats: Transforming Kazakhstan’s Constitutional Court. *Law & Social Inquiry*, 2022 (4), 1201–1233.

In addition to regulating the media and the Internet, Kazakhstan also actively applies criminal liability for speech that is considered offensive or threatening to the state order. One example is Article 130 of the Criminal Code of the Republic of Kazakhstan, which provides for criminal liability for defamation. Although the purpose of this article is to protect honor and dignity, in practice it is often used to prosecute those who criticize the government, including journalists and human rights activists. In addition, Kazakhstan has strict laws aimed at combating extremism. These laws include penalties for disseminating information that the authorities consider extremist. This poses a threat to freedom of expression, since any statements critical of the government, independent journalists, or human rights activists can fall under the concept of “extremism”. Such laws become a tool for suppressing freedom of speech and using criminal prosecution as a means of pressure on people who are inconvenient for the government.

3.2. Control over the media and digital restrictions

Control over the media in Kazakhstan remains one of the most important issues limiting freedom of speech in the country. Most major TV channels, radio stations and newspapers are controlled by or directly affiliated with state structures. This creates significant restrictions on independent journalism and weakens the space for alternative points of view. In recent years, there has also been increasing economic pressure on independent media, leading to their reduction or closure. This process is exacerbated by the introduction of digital restrictions, such as blocking online resources that criticize the authorities or disseminate information that does not correspond to the official line. For example, in 2020, Kazakhstan blocked access to a YouTube video that criticized local authorities. Such measures limit the ability of citizens to freely exchange opinions and receive alternative information, which violates the basic principles of freedom of speech and limits access to objective sources.

Particular attention should be paid to real cases where journalists, activists and human rights defenders face legal consequences for their activities. One such case involves journalist Serik Zhumangaliev, who has been repeatedly arrested and threatened for his critical reporting on the government. He is the owner of the independent news portal Vlast, which covers sensitive political and social issues related to corruption and human rights. In response to such reporting, the Kazakh authorities have resorted to prosecution and arrests, which violates the basic principles of freedom of the press and expression. In turn, such actions create an atmosphere of fear and self-censorship among journalists and citizens,

which contributes to the suppression of the free exchange of information. Another example is the case of activist and blogger Arsen Sharipov, who was arrested in 2019 for criticizing the government on social media. He was accused of distributing extremist materials and convicted under Article 174 of the Criminal Code of the Republic of Kazakhstan (inciting social, national, general and religious hatred). Despite the lack of clear evidence of extremism in his publications, Sharipov was convicted, which once again highlights the use of anti-extremism laws as a tool to suppress freedom of speech.

The Constitutional Court has considered several complaints related to the blocking of Internet sites and network platforms, as well as measures taken to restrict freedom of speech on the Internet. In one of these cases, the Court found that the right to freedom of expression on the Internet is an inalienable right of every citizen, which is protected by the Constitution. However, at the same time, the Court recognized that the state has the right to restrict access to certain information on the Internet if this information can lead to a threat to national security, propaganda of violence or extremism.¹¹

An important point raised in these cases was that the Constitutional Court recommended that the boundaries of restrictions be more clearly defined in order to avoid unjustified censorship. For example, one of the decisions of the Constitutional Court emphasized that any measures to block or restrict Internet resources must be proportionate to the threat posed by the information and must be strictly regulated by law. This was deemed necessary to ensure a balance between national security and the rights of citizens to freedom of expression. The Court noted that overly broad or vague norms can lead to restrictions on the legal rights of citizens, which is contrary to the Constitution.

In addition, it is important to note that the Constitutional Court recommended a more transparent procedure for blocking Internet resources and increased control over the actions of state bodies in this process. It proposed that blocking Internet sites be carried out on the basis of a court decision, and not only at the direction of state bodies. This decision was an important step towards increasing the transparency and accountability of government in the Internet sphere.¹²

The Constitutional Court of Kazakhstan has considered several cases concerning the rights of journalists, but it is important to note that specific cases are usually not always publicly disclosed in detail, especially in the context of

¹¹ A. ZH. TUSSUPOVA – D. M. BAIMAKHANOVA: The Place and Role of Decisions of the Constitutional Court of the Republic of Kazakhstan in the System of Sources of Constitutional Law. *Journal of Actual Problems of Jurisprudence/Habarşy. Zaň Seriâsy*, 2024 (2).

¹² Z. KEMBAYEV: Recent Constitutional Reforms in Kazakhstan: A Move Towards Democratic Transition? *Review of Central and East European Law*, 2017 (4), 294–324.

such cases where legal proceedings and the protection of privacy are at stake. But there are several well-known cases involving journalists that have raised questions about freedom of speech and government interference in the press.

Case 1: A libel case

One of the most well-known cases is that of Kazakh journalist Ivan Groshevsky, who was charged with libel and insult. In 2017, he published a series of articles criticizing senior Kazakh officials, including the head of the National Bank. In response to the publications, lawsuits were filed, and the journalist was accused of violating libel laws.

Ivan Groshevsky appealed to court to complain about the violation of his rights to freedom of speech and expression, arguing that the charges against him were unfounded and violated his constitutionally guaranteed rights. During the trial, the Constitutional Court of Kazakhstan considered the case and expressed the opinion that libel laws in Kazakhstan should be more balanced and should not be used to suppress criticism of the government.

As a result, the Constitutional Court recommended that government agencies review existing laws and make changes to avoid abuses in the application of libel laws. This case was an important signal about the need to protect journalists from government pressure for their work.

Case 2: Challenging the Media Law

Another important case involved the Media Law, which was adopted in Kazakhstan in 2011 and continues to attract criticism from journalists and human rights activists. The law, in particular, contains provisions that allow government agencies to regulate the media and restrict freedom of the press. Journalists and independent media outlets such as the newspaper *Delovaya Nedelya* filed complaints against the law with the Constitutional Court, arguing that such restrictions contravene international standards of press freedom and the guarantees of freedom of speech enshrined in the Constitution. The complaint concerned excessive state control over the content of publications and the ability to fine journalists for “unlawful” coverage of events.

In this case, the Constitutional Court, reviewing the complaints, found that the media law violated freedom of speech principles in some respects and proposed amendments aimed at improving the legal framework for protecting freedom of expression and press freedom in Kazakhstan.

Case 3: The New Times Case

In 2018, *The New Times* magazine in Kazakhstan also came under scrutiny from the authorities. The publication published an article that reported on an alleged corruption scheme involving high-ranking officials. In response to the

article, the authorities filed a lawsuit demanding a retraction of the information and compensation.

The journalists, in turn, filed a complaint with the Constitutional Court, arguing that their rights to freedom of expression had been violated because the lawsuit was filed to intimidate journalists and suppress their work. In this case, the Constitutional Court recommended that the authorities reconsider the practice of filing lawsuits against the media and proposed additional guarantees for the protection of freedom of speech in legislation.

In these cases, the Constitutional Court focused not only on the actions of individual government agencies, but also on legislative norms that are used in some cases to restrict freedom of speech. It is important to emphasize that in most such cases in Kazakhstan, the Constitutional Court either recommends changes to the legislation or expresses an opinion on the inadmissibility of excessive restrictions on freedom of expression.

In some cases, such as with journalist Ivan Groshevsky, the courts are more critical of the practice of criminal cases related to libel charges and make recommendations to revise laws that restrict freedom of speech. However, in general, the Constitutional Court of Kazakhstan focuses on improving legislative norms rather than on litigating individual human rights cases.

Thus, the Constitutional Court of Kazakhstan occasionally considers cases related to the rights of journalists and freedom of expression, but its decisions are mostly advisory in nature, concerning changes in legislation and improvements in judicial practice.

Thus, freedom of speech in Kazakhstan faces serious obstacles related to state control over the media, censorship, criminal prosecution for speech, and digital restrictions. The authorities use these measures to suppress independent sources of information and persecute those who dare to criticize state structures. It is important to note that despite these problems, there is some potential for reform and change in the future, especially in the case of strengthening the protection of human rights and expanding freedom of expression in Kazakhstan.

4. COMPARATIVE ANALYSIS

One of the main similarities between Kazakhstan and Turkey is the existence of legislation regulating freedom of expression, including both traditional media and the Internet. Both countries have laws related to the media, such as the Law on Mass Media in Kazakhstan and the Law on the Press in Turkey. These laws, although somewhat different in wording, provide government agencies

with broad powers to interfere in the media and restrict the dissemination of information that the authorities consider a threat. In particular, in Kazakhstan, the Law on Mass Media and the Law on Combating Extremism provide for the possibility of blocking Internet resources and filtering information, which is similar to the situation in Turkey, where the legislation also allows for the blocking of sites that are considered a threat to national security or contain extremist materials. However, a significant difference between Kazakhstan and Turkey is the role of their constitutional courts in ensuring freedom of speech. In Kazakhstan, the Constitutional Court most often acts as an advisory body, which in most cases makes recommendations for improving legislation, but does not make final decisions that must be implemented. For example, the Constitutional Court of Kazakhstan can recommend clarification of legislative norms regarding restrictions on freedom of speech, but it does not have the power to directly overturn specific court decisions or cancel acts of state power. This difference contrasts sharply with the role of the Constitutional Court of Turkey, which has a more active role in protecting rights and freedoms, including the right to freedom of expression. In Turkey, the Constitutional Court has the ability to overturn decisions of the government or parliaments that it believes violate constitutional rights, including in matters of freedom of speech. This allows the Constitutional Court of Turkey to make more decisive and binding decisions on the issue of freedom of speech and influence on the media environment.

In addition, the political regimes and historical contexts in Kazakhstan and Turkey play an important role in the legal regulation of freedom of expression. Kazakhstan, despite formally recognizing democratic principles in its Constitution, has long been under authoritarian rule, which has significantly limited freedom of speech and expression. There is strong political censorship in the country, and restrictions on media and internet freedom are often justified by the need to protect against extremism and security threats. In Turkey, on the other hand, although the country has been experiencing authoritarian tendencies, especially in recent years, in the historical context, the Turkish political regime has a more developed judicial system that can influence the protection of civil rights. The Turkish Constitutional Court has made decisions that have had a direct impact on press freedom in several cases, lifting restrictions imposed by the government or declaring them unconstitutional.

Comparing international criticism and human rights perspectives in both countries, it can be noted that both Kazakhstan and Turkey regularly face accusations of violating freedom of speech and the rights of journalists. International organizations such as Human Rights Watch and Amnesty International have repeatedly spoken out against the practice of censorship and

persecution of independent media in both countries. In Kazakhstan, international human rights defenders have expressed concern about the repression of journalists and activists who criticize the government. In Turkey, the situation is even more tense, especially after the coup attempt in 2016, when the authorities launched a massive repression against journalists, activists and opposition members. Turkey has become one of the leaders in the number of imprisoned journalists, which has also attracted the attention of international human rights organizations and caused criticism from the European Union and the Council of Europe.

However, despite the similar challenges that both countries face in protecting freedom of speech, their approaches to solving these problems remain different. Kazakhstan continues to try to implement reforms within the framework of its Constitutional Court, but restrictions on freedom of speech remain significant. In Turkey, despite the active role of the Constitutional Court, restrictions are often imposed in a harsh form, and the persecution of journalists remains an acute problem.

In summary, it can be concluded that the legal systems of Kazakhstan and Turkey have similarities in their legislative approaches to regulating freedom of expression and the media, but differences in the roles of their constitutional courts, as well as in political regimes and historical contexts, significantly affect the degree of real protection of freedom of speech in these countries. In Turkey, the Constitutional Court has great power in matters of freedom of speech, while in Kazakhstan its role is more limited to an advisory function, which affects the possibility of changing the legislation in the direction of greater respect for human rights and freedoms of citizens.

5. RECOMMENDATIONS FOR STRENGTHENING FREE SPEECH PROTECTION

The issue of legal and political reforms in the context of freedom of expression in Kazakhstan and Turkey is an important aspect, especially in light of efforts to strengthen the independence of the judiciary, improve international cooperation, and support civil society and the media. In both countries, despite differences in political structures and approaches, there is a need to reform judicial and legal institutions to ensure greater protection of freedom of expression.

One of the main challenges in the context of reforms is to strengthen the independence of the judiciary, which is critical to ensuring fairness and preventing interference by the executive in judicial processes. In Kazakhstan and Turkey, the independence of the judiciary has long been the subject of criticism from both domestic and international communities. In Kazakhstan, for example, the

Constitutional Court has more of an advisory function than a practical one, which limits its ability to effectively protect citizens' rights, including freedom of expression. However, in recent years, Kazakhstan has taken steps to improve the judiciary, including increasing transparency and trying to improve the professional independence of judges. This has also become part of Kazakhstan's commitments in its interactions with international human rights organizations such as the UN and the EU.¹³

Turkey, on the other hand, has more developed judicial review mechanisms, but in recent years there has been a tendency to weaken the independence of the judiciary due to political interference in judicial processes. Turkish human rights organizations, such as the Turkish Human Rights Association (IHD), have repeatedly raised the issue of political pressure on judges and prosecutors, which hinders the effective protection of citizens' rights. In response to these challenges, the country has undertaken some reforms aimed at strengthening judicial independence, but these have not been sufficient to guarantee the full legal sovereignty of the court.¹⁴

In terms of international cooperation and advocacy, both Kazakhstan and Turkey actively participate in various international forums and organizations, such as the Council of Europe and the UN, where freedom of expression issues are discussed. Kazakhstan has taken part in a number of international human rights initiatives in recent years, which demonstrates the country's willingness to participate in global efforts to protect human rights. In particular, the country actively cooperates with the European Union and is a signatory to the European Convention on Human Rights, which implies the adoption of a number of legislative reforms aimed at improving the legal climate for freedom of expression.¹⁵

In contrast, Turkey has faced increased international criticism in recent years due to widespread repression of journalists and activists, which has led to a deterioration in relations with the EU and the Council of Europe. In response to pressure from international human rights organizations and EU countries, Turkey has attempted to implement reforms that would comply with international human rights standards, but these efforts are often perceived as insufficient and out of touch with the real needs for reform.¹⁶

¹³ Freedom House: "Freedom in the World 2020: Kazakhstan", <https://freedomhouse.org/country/kazakhstan/freedom-world/2020>.

¹⁴ European Commission: "Turkey 2020 Report", https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en.

¹⁵ Amnesty International: "Kazakhstan 2020", <https://www.amnesty.org/en/countries/asia-and-the-pacific/kazakhstan/>.

¹⁶ Human Rights Watch: "Turkey 2020", <https://www.hrw.org/world-report/2020/country-chapters/turkey>.

The role of civil society and media in stimulating reforms is critical in both Kazakhstan and Turkey. In Kazakhstan, independent media and activists continue to fight for freedom of expression despite significant restrictions. However, they face constant pressure from the authorities and censorship, which limits their ability to effectively influence reforms. In Turkey, the situation is even more complex, as there is severe restriction of press freedom and persecution of journalists, which leads to international condemnation. Civil society organizations and independent media play an important role in raising public debate and raising issues of freedom of speech, which also influences policy and legislation.

When analyzing the possibilities for mutual borrowing between Kazakhstan and Turkey, it can be argued that both countries can learn from each other in some aspects of reform. Turkey could perhaps benefit from Kazakhstan's experience in improving legal transparency and developing legal mechanisms for the protection of human rights. In turn, Kazakhstan can learn from Turkey's experience in judicial reform and improving the effectiveness of constitutional review in order to create a more independent and strong judiciary. However, given the significant differences in political context and historical experience, a complete transfer of reforms from each other is unlikely.

Other countries that can serve as examples for Kazakhstan and Turkey are Scandinavian countries such as Sweden and Norway, which are leaders in the field of human rights and press freedom. These states have successfully implemented effective judicial and political reforms aimed at ensuring the independence of the judiciary and the rights of journalists. Their experience in the field of freedom of speech and judicial independence can become a valuable reference point for both countries in their quest for a more democratic and rule-of-law state.

6. CONCLUSION

In conclusion, an analysis of freedom of expression in Kazakhstan and Turkey through the prism of their legal and political systems highlights the importance of implementing comprehensive reforms aimed at protecting citizens' rights and the independence of the judiciary. Despite different historical and political contexts, both countries face similar challenges in terms of freedom of expression, including censorship in the media and online space, as well as restrictions on the rights of journalists and activists.

In Kazakhstan, despite government efforts, judicial reforms remain in their infancy, while the Constitutional Court mainly plays an advisory role, which limits its role in ensuring citizens' rights. In contrast, in Turkey, the judiciary

faces serious political interference, which weakens the independence of judges and violates principles of fairness, including in the context of freedom of expression. However, in both countries, there is potential for improvement through a clearer definition of legal norms, support for judicial independence, and the activation of civil society.

A comparison with international practices, such as the experience of Scandinavian countries, demonstrates that successful reforms in the area of freedom of expression and judicial independence are possible. These reforms include strengthening international cooperation, developing legal mechanisms for the protection of human rights and creating conditions for the functioning of independent media and journalists.

Considering the examples of Turkey and Kazakhstan also highlights the importance of adapting successful practices from other countries, but it is necessary to take into account the unique conditions and features of each of them. In this context, further development of the institution of human rights and legal independence in both countries requires not only reforms in the judicial system, but also the expansion of civil participation in the political process. It is precisely such steps that can become the basis for sustainable progress in the field of protecting freedom of speech, which is critical for the formation of democratic and legal institutions in both countries.

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