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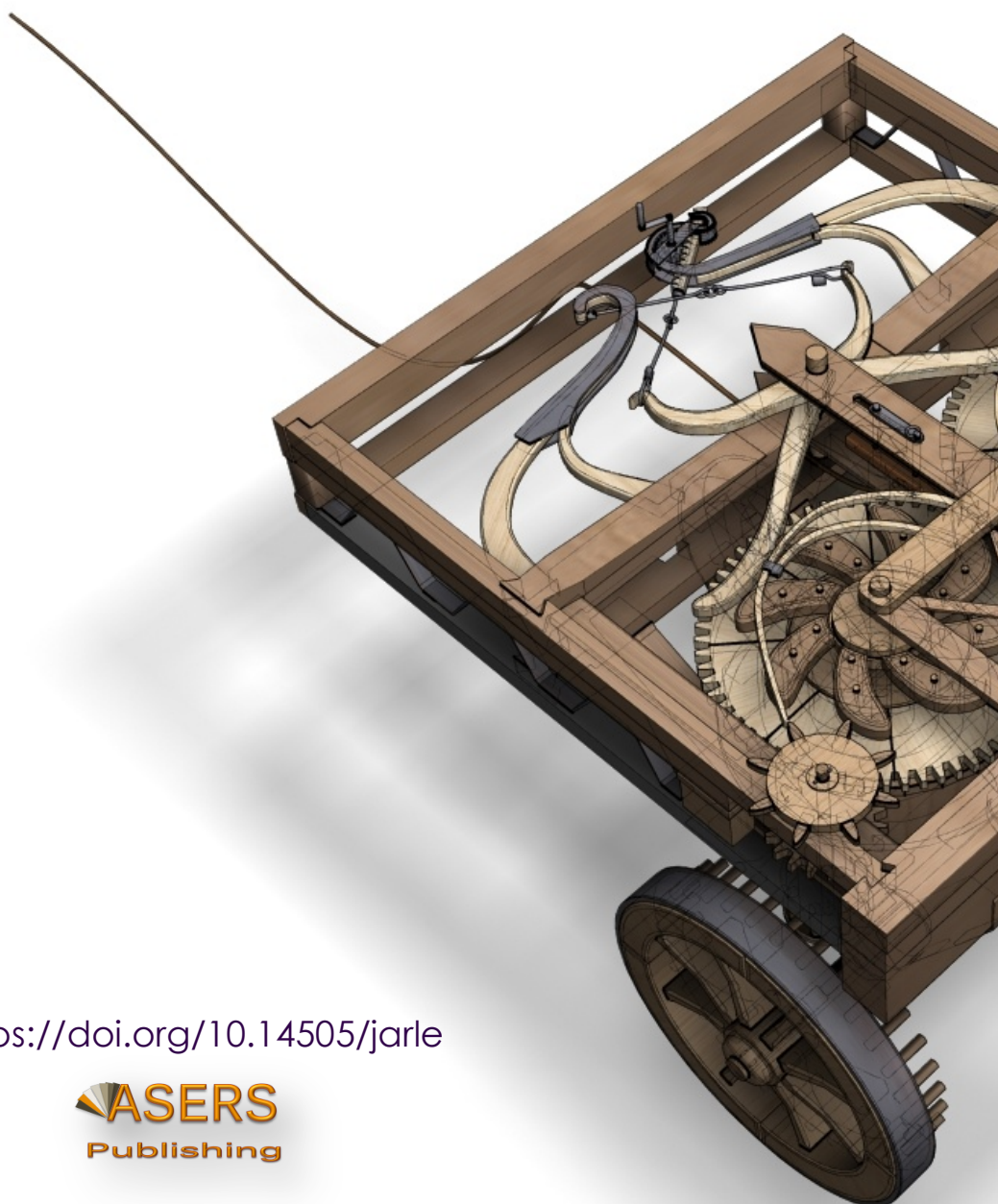
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On the National Security Correlation with Freedom of Speech in Kazakhstan

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Abstract:

This article deals with problems of the relationship of national security and freedom of speech in Kazakhstan. Considering the questions about the essence and importance of national security, the authors paid special attention to the legal consolidation of the national security concept in Kazakhstan. The article also examines the theoretical foundations of the relationship of freedom of speech and national security and provides recommendations on differentiation of the definitions of national security and freedom of speech. Citing reports of reputable international organizations and materials of independent mass media, the authors considered individual cases of persecution of the freedom of expression, opposition media close-downs, harassment of independent journalists.

Keywords: freedom of expression; independent journalists; national security; information security; criminal code.

JEL Classification: H56; K30.

Introduction

Today, exercising the right to freedom of expression in several countries, including Kazakhstan, faces very serious problems. Many countries do not adequately fulfill their obligations to the international community to protect human rights to freedom of expression. In many cases, they justify their actions against the freedom of expression with the national security protection (Byrum 2016). The rights to freedom of expression are enshrined in many international documents, many of which have been ratified by these countries.

Article 19 of the Universal Declaration of Human Rights established that 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.

According to Article 19 of the International Covenant on Civil and Political Rights, everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of these rights carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

In some countries, which declared themselves as democratic, many journalists, public figures, civil society activists, and ordinary citizens are harassed by state authorities (Dutta and Roy 2016; Akhmetshin and Vasilev 2016). For example, since 2001, the Pakistan Press Foundation has documented 405 cases of violence against media personnel, including 49 murders, 269 assaults, and 42 abductions and detentions. Given this dire state of affairs, it was shocking that media companies themselves have not been working collectively for the safety of media professionals (Owais 2016).

The annexation of Crimea by Russia and the military conflict in the eastern part of the country led to assaults, censorship, and intimidation of journalists and media outlets. According to the Kyiv-based Institute of Mass Information, the number of press freedom violations in 2014 increased by 50 percent compared to 2013. That was also a year when Ukrainian journalists, fleeing both military conflict and professional intimidation, became internally displaced and were forced to start over in other cities (Sabera 2016). A similar situation has taken place in recent years in Kazakhstan. Freedom of speech is also limited largely there by the state, although the country's constitution guarantees this freedom. According to the Constitution, Kazakhstan proclaims itself a democratic, secular, legal, and social state whose highest values are individuals, their lives, rights, and freedoms. The Republic declares the rights and freedoms as the highest values. Article 20 of the Constitution guarantees freedom of expression and creativity and prohibits censorship. But despite that, there are multiple facts of the violation of the right to freedom of expression in Kazakhstan. Opposition newspapers are closed down, opposition websites are blocked, independent journalists are prosecuted, etc. Kazakhstan is ranked 160th out of 180 countries in the 2015 Reporters without Borders (2015) press freedom index. All leading independent national newspapers were closed down in 2012 and any attempts to establish new ones were quickly suppressed. A handful of independent regional newspapers struggle to survive (Reporters without Borders 2015). Answering the 'freedom of speech' question, the authorities refer largely to national security protection. And the arising question here is about the relationship of national security and freedom of speech, about how to ensure national security by infringing human rights to obtain information, about innovations in the criminal law of Kazakhstan, and about freedom of speech (Khamzina 2016). In this article, we will try to analyze based on particular examples the relationship of national security with freedom of speech in Kazakhstan.

1. Methodological framework

The scientific article is methodologically based on the system analysis method. To give a complete characterization of freedom of speech in Kazakhstan, the authors used the historical analysis method. The authors tried to refer to the information on real cases, published in various sources. The authors used various legal acts, official documents, and scientific papers, as well.

2. Results

Firstly, we would like to focus on the concept of national security and its component parts, because the significance of national security is very important at this stage of humankind development. Upon winning independence, Kazakhstan, as a young state, found it important to preserve its national security and build a new state type. For Kazakhstan, national security on the one hand, is an integral part of the legal foundations of the state, while on the other hand, it is an essential agenda of foreign policy and foreign economic activities of the state (Nurtazina 2014).

National security is the condition of national interests' protection from actual and potential threats. Kazakhstan ensures its national security by any means and methods, including economic, political, military, legal, special (intelligence, counterintelligence), applied unilaterally or in accordance with international agreements (Nurpeisov 2003). Many of legal definitions of national security, provided by special legislation of states, state the objects or purposes of national security by identifying major national values, which are

understood as belonging to a particular material, intellectual, and spiritual property of the state as the basis of its existence and development, and therefore, they need to be protected (Amanzholov 2008). National security includes: public security, military security, political security, environmental safety, and protection from the threats of natural disasters, economic security, energy security, and information security.

Country's national security means the ability to resist to hostile, destructive forces of natural, technological, and social nature, and neutralize them (Boldrin and Rustichini 2000). It means the protection of individuals (their rights and freedoms), social and national groups (their status, functional roles, identities), the society (its material and spiritual values), and the State (its territorial integrity, sovereignty, and constitutional order). All these levels are interconnected, and the priorities are set according to a particular situation and may vary depending on the circumstances (Bakaev 2000).

Here, we should pay attention to the fact that national security is mainly ensured through the protection of human rights and freedoms. This raises the question, 'then why do state authorities violate human rights to freedom of expression in order to protect the national security?' In fact, national security protection is basically the respect for human rights. We agree that it may therefore be subject to certain restrictions for the protection of national security. But, one should determine the cases, in which freedom of expression can be violated for the sake of ensuring the national security.

Since our article is related to freedom of speech, we must pay attention to the ways to ensure information security. Kazakhstan, as any modern state, defines information security as one of the main aspects of the national security. Information security of Kazakhstan targets ensuring the protection of the country's national interests in the information sphere, which is determined by a combination of balanced interests of individuals, the society, and the state (Khamzina and Buribayev 2015). The interests of the state in the information sphere are: (a) to create conditions for the harmonious development of Kazakhstan's information infrastructure; (b) to implement the constitutional rights and freedom of humans and citizens in obtaining and using information in order to ensure the constitutional order inviolability; (c) to ensure Kazakhstan's sovereignty and territorial integrity, as well as political, economic and social stability; (d) to enforce the law and order, develop equal and mutually beneficial international cooperation (Nurtazina 2014).

In one article, a researcher of the Research Institute of the National Security Committee of Kazakhstan identifies as the main threats to information security eight basic points, four of which are related to freedom of speech. We would particularly like to emphasize threats named by that author: (1) the activity of foreign political, economic, military, intelligence and information structures, directed against the interests of the state in the information sphere; (2) the undermining of the political and social foundations of the state population by massive psychological treatment in order to destabilize the situation in the society and the state ('Internet revolution'); (3) the distribution of propagandist information adversely affecting public consciousness and socially important setting, imposing (promoting) the ideas of terrorism, extremism, etc.; (4) the manipulation of flows in the information space targeting the distortion of the psychological and spiritual spheres of the society, the decreasing extent of protection of the legitimate interests of citizens, the society, and the state in the information sphere (Seferovskaya, 2013).

To ensure its national security, Kazakhstan established a number of specialized agencies. According to the National Security Law adopted on 21.12.1995, national security agencies of Kazakhstan are directly subordinated and accountable to the President of Kazakhstan; special governmental bodies are an integral part of the security system of Kazakhstan, and are held within their powers to ensure the safety of persons and society, protect the constitutional system, governmental sovereignty, territorial integrity, economic, scientific-technical, and defense potential of the country.

Thus, the national security protection functions are assigned to the following authorities:

The National Security Committee of Kazakhstan, the Kazakhstan Foreign Intelligence Service, and the Security Service of the President of Kazakhstan;

The Armed Forces, other troops and military formations of Kazakhstan;

The bodies of internal affairs, financial police, state fire service, customs authorities, and emergency services (Chukubayev and Kenzhegulov 2014).

In 2014, the financial police was replaced with the newly established Agency for Civil Service Affairs, and Anti-Corruption.

In January 6, 2012, the National Security Law of Kazakhstan was adopted. According to Article 23, information security is ensured by the decisions and actions of state bodies, organizations, officials, which are aimed at: (1) preventing the informational dependence of Kazakhstan; (2) preventing the expansion of the information blockade by other states, organizations, and individuals; (3) preventing the information isolation of

the President, Parliament, Government, and national security authorities of Kazakhstan; (4) ensuring smooth and stable operation of communication networks in order to preserve the security of Kazakhstan, in particular in the event of emergency situations of natural and man-made disasters, quarantines, and other emergencies; (5) detecting, preventing, and suppressing the disclosure and loss of information constituting state secrets and other secrets protected by law; (6) preventing the propagation of information impacting the social and individual consciousness, associated with the propagation of intentionally distorted and false information to the detriment of national security; (7) detecting and disrupting hidden mechanisms of the information influence on the process of government decision development and decision-making to the detriment of national security; (8) maintaining and developing effective information resource protection, information systems and communications infrastructure, which circulate information constituting state, commercial, and other secrets protected by law. Paragraph 4 of Article 23 of the National Security Law of Kazakhstan reads that during anti-terrorist and crowd control operations, the operational headquarters head is empowered to require owners of networks and telecom service providers to suspend providing communications services to individuals and legal entities and limit the use of networks and communication means, as well as change the mode of networking and communications products.

The above-mentioned articles of legal provisions indicate that Kazakhstan considers the possibility of restricting the freedom of expression only with regard to ensuring national security. But the mechanisms of implementation of these articles are ambiguous. In other words, the way public authorities operate within the law to restrict freedom of speech does not see any difference between ensuring national security and protecting the government interests. In the next section, we consider how the problem of freedom of speech restriction is not related to protecting the national security.

3. Discussions

Geoffrey R. Stone mentioned, the tension between freedom of speech and national security arises in two different contexts. In his article, he explored the two facets of this tension that have generated particular difficulty in the United States. The first issue involves speech that criticizes the government. The second issue involves secrecy (Stone 2009). In recent years, there has been exactly the same situation in Kazakhstan. Recently, authorities have decided to completely eradicate freedom of speech. To suppress open criticism of the authorities, they introduced new articles in the new Criminal Code of Kazakhstan in 2014. Article 174 of the Criminal Code of Kazakhstan establish severe penalties for 'inciting social, national, clan, racial, or religious discord.' According to this article, intentional actions directed to incurring social, national, generic, racial, class, or religious hatred, insult of the national honor and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority, or inferiority of citizens based on their relation to religion, class, nationality, gender, or race, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by publication or distribution of literature or other information media, promoting social, national, generic, racial, class, or religious discord, shall be punished by custodial restraint for the term of two to seven years or imprisonment for the same term. This article has already been used against those who openly criticized recently the action of the authorities. In October 12, 2015, the police of Almaty arrested Serikzhan Mambetalin and Ermek Narymbaev for insulting the national honor and dignity, as well as for incurring ethnic hatred. Mambetalin and Narymbaev were convicted under Article 174 of the Criminal Code. The reason was their Facebook post containing a text from the 'Wind in the Street' book, which, they claimed, had been copied from the Internet (Omirezhanov and Alpysbek 2016). Civil society activists and Serikzhan Mambetalin Ermek Narymbaev by decision of the Appeal board dated March 30, 2016 were sentenced to two and three years of custodial restraint (Sviridov 2016).

Now, journalists in Kazakhstan should be very careful when writing any articles about anyone. Since Article 274 of the Criminal Code sets a punishment for intentional false information propagation and can lead to admitting guilty any journalist publishing materials against the interests of certain authorities. According to this article dissemination of knowingly false information, creating a danger of violation of public order, or infliction of substantial harm to the rights and legal interests of citizens or organization or the interests of the society or the state, protected by the Law, is punished by a fine of up to one thousand monthly calculation indices or the same quantity of correctional labor, or custodial restraint for the term of up to one year, or imprisonment for the same term. So far, a few journalists have left the country to avoid the prison for published materials (Portnikov 2016).

Further follows a brief overview of the situation with secrecy. On March 15, 1999, the Law of Kazakhstan 'On State Secrets' was adopted. One chapter of this legal act is devoted to certain types of state secrets: state secrets in the military field, economy, education, science, technology, foreign policy, foreign economy, intelligence, counterintelligence, criminal investigations, and other activities. According to Article 14 Clause 11,

information about the organization, forces, means, and methods to ensure the safety of the President of Kazakhstan and his (her) family members, on the health and personal life of the President of Kazakhstan and his (her) family, is qualified as the state secret of Kazakhstan in the field of intelligence, counterintelligence, criminal investigations, and other activities. According to Article 185 of the Criminal Code of Kazakhstan, illegal collection of information constituting state secrets, as well as dissemination of illegally obtained information constituting state secrets, in the absence of signs of the state treason or spying, is punished with custodial restraint for up to five years or imprisonment for the same term, with imprisonment for the same term, with deprivation of the right to occupy certain positions, or to be engaged in certain activities for the term of up to three years or without it. Thus, information on the President and his family members is protected as a state secret, and propagation of such information entails punishment under the Criminal Code.

The situation with freedom of speech in Kazakhstan is already known around the world; many international organizations are concerned about this situation. The United States Department of State in its 2015 Country Reports on Human Rights Practices mentioned main problems related to the freedom of speech in Kazakhstan. According to this report, the law criminalizes the release of information regarding the health, finances, or private life of the President, as well as economic information, such as data about mineral reserves or government debts to foreign creditors. To avoid possible legal problems, media outlets often practice self-censorship regarding the President and his family. The law prohibits 'influencing public and individual consciousness to the detriment of national security through deliberate distortion and spreading unreliable information.' Legal experts noted the term 'unreliable information' is overly broad. The law also requires owners of communication networks and service providers to obey the orders of authorities in case of terrorist attacks or mass riot suppression.

The law prohibits publication of any statements that promote or glorify 'extremism' or 'incur social discord.' These terms, according to international legal experts, have not been clearly defined by the government. The government deliberately intimidates media outlets criticizing the President; such intimidation included law enforcement actions and civil suits. Although these actions had a chilling effect on media outlets, some criticism of the government policies continued, as did incidents of local government pressure (United States Department of State Bureau of Democracy).

Amnesty International in its report for 2015 highlighted the issues of independent journals' rejection. In February, the appeal claim against the Adam Bol newspaper close-down was rejected. Adam Bol was closed down on national security grounds in December 2014, after it published an interview with a member of the opposition based in Ukraine. Later in the year, the Almaty city authorities attempted to close down its successor, Adam, on administrative grounds. In September, a three-month ban came into force, on the grounds that Adam was registered to publish in Russian and Kazakh, but was only publishing in Russian. In October, Adam was ordered to close down by a court upon the claim of the Office of the Prosecutor General, on the grounds that it had illegally been publishing content on its Facebook page.

Amendments to the Communications Law adopted in 2014 gave the Office of the Prosecutor General the power to force Internet service providers to block access to Internet content without a court order if they found such content 'extremist' and a security threat. This power was used to block access intermittently or permanently to Kazakhstan-based news outlets and to individual articles on international news websites (Amnesty International 2016). Observers reported the government blocked or slowed access to opposition websites. In several cases, the government denied it was behind the websites blocks. Bloggers reported anecdotally that their websites were periodically blocked, including independent news sites such as ratel.kz, zonakz.net, and uralskweek.kz, as well as the website of the banned Respublika newspaper. Radio Azattyk reported that some of its news reports were not accessible in the country (United States Department of State Bureau of Democracy).

Recently, the European Parliament adopted a resolution on freedom of expression in Kazakhstan and made some remarks to Kazakhstan authorities. We find some of them worth mentioning in this article. According to this document, the European Parliament:

- (1) Condemns the continued persecution of independent and/or critical media, journalists and bloggers; condemns the use by Kazakhstan authorities of politically motivated accusations and the common practice of extracting false confessions by threatening with long-term imprisonment sentences.
- (2) Calls on the Kazakh authorities to act in accordance with its international obligations, respecting human rights and fundamental freedoms, such as freedom of expression, media and assembly; reminds Kazakhstan of its OSCE commitments to democratic reforms and of its ambition as a candidate for a non-permanent seat at the UN Security Council in 2017-2018.

- (3) Calls to repeal and cancel politically motivated previous and current court cases, sentences, judgments, and sanctions against Gyuzyal Baydalinova, Yulia Kozlova, Serikzhan Mambetalin, Ermek Narymbaev, Seitkazy Matayev, Bolatbek Blialov, and Vladimir Kozlov (European Parliament Resolution on Freedom of Expression in Kazakhstan).

Conclusions

Currently, the main factor in Kazakhstan that suppresses freedom of speech is the government, since under the pretext of protecting national security, it has made every effort to restrict the human right to freedom of expression. Although the legislation clearly specifies the conditions of the freedom of speech restriction, many public authorities try to prevent criticism of government actions. Thus, in practice, the government fights against dissent under the guise of national security.

Many Kazakhstani and foreign experts talk about the need to separate the concept of national security from the interests of the current government. According to the expert of the 'Article 19' International Human Rights Organization Andrew Smith, many of the provisions of Kazakhstani legislation are designed to protect national security and not to protect individuals. Based on that, it follows that the protection of the state should target the territorial integrity protection and is not a barrier for open discussions (Kudryashova 2013). Freedom of expression, the existence of an open dialogue between the society and the authorities will only lead to the development of civil society institutions and the entire state. The state power must not belong to a certain group of people. The society should have certain levers of influence on power. The main lever should be free mass media, able to force the power to reckon with the society. In our opinion, the government under the guise of national security should not restrict the freedom of speech in the country. It is also necessary to respect the principle of legitimacy and not allow the laws to serve the interests of certain groups of people and be interpreted at the request of certain persons.

References

- [1] Akhmetshin, E. M., and Vasilev, V. L. 2016. Control as an instrument of management and institution of economic security. *Academy of Strategic Management Journal*, 15(1): 1-7.
- [2] Amanzholov, Zh.M. 2008. The National Security: The Essence and the Definition of Main Components. *Zanger*, 6(83): 96-112.
- [3] Amnesty International. 2016. The State of the World's Human Rights. Report 2015/16. Kazakhstan. *The Kazakhstani International Bureau for the Human Rights and Law Enforcement*, LLC. Available at: http://www.bureau.kz/en/monitoring/international_reports_on_kazakhstan/the_state_of_the_worlds_human_rights_report_15
- [4] Bakaev, L.K. 2000. *The National Security of Kazakhstan*. Astana: Elorda.
- [5] Boldrin, M., and Rustichini, A. 2000. Political equilibria with social security. *Review of Economic Dynamics*, 3(1): 41-78.
- [6] Byrum, K. 2016. The European right to be forgotten: A challenge to the United States Constitution's First Amendment and to professional public relations ethics. *Public Relations Review*, 42(4). DOI: doi.org/10.1016/j.pubrev.2016.10.010
- [7] Chukubayev, E.S., and Kenzhegulov, K.S. 2014. National Security as the Degree of Protection of National Interests. *KazNU Bulletin. International Relations and International Law Series*, 2(66): 53-57.
- [8] Dutta, N., and Roy, S. 2016. The interactive impact of press freedom and media reach on corruption. *Economic Modelling*, 58: 227-236.
- [9] European Parliament Resolution on Freedom of Expression in Kazakhstan (2016/2607(RSP)) B8-0349/2016. *The official website of European Parliament*. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2016-0349&format=XML&language=EN>
- [10] Khamzina, Z.A. 2016. Constitutional Law Fundamentals of the State Administration of the Social Sphere in Kazakhstan. *International Journal of Environmental and Science Education*, 11(12): 5237-5249.
- [11] Khamzina, Z.A., and Buribayev, Y.A. 2015. Evaluation of the Reform Efficiency in Public Social Sector

Management of Kazakhstan. *Mediterranean Journal of Social Sciences*, 6(3): 5-13.

- [12] Kudryashova, O.V. 2013. It is Necessary to Delineate the Protection of National Security and the Right to the Freedom of Speech in Kazakhstan. *The Internews Kazakhstan website*. Available at: <http://www.internews.kz/newspage/09-01-2013/461>
- [13] Nurpeisov, D.K. 2003. *National Security: The Legal Aspect*. Scientific and Reference Edition. Almaty: Digital Print.
- [14] Nurtazina, R.A. 2014. *The National Security of Kazakhstan*. Study Guide. Almaty: Bastau.
- [15] Omirzhanov, Y., and Alpysbek, M. 2016. Features of Civil Society Formation in Kazakhstan: Problems and Prospects. *International Journal of Current Research*, 08(3): 28723-28728.
- [16] Owais, A. A. 2016. Journalists in Pakistan Unite to Fight Violence Against Media. *Open Society Foundations website*. Available at: <https://www.opensocietyfoundations.org/>
- [17] Portnikov, V. 2016. The Kazakhstani Freedom of Speech. *Radio Liberty website*. Available at: <http://svoboda.org/content/transcript/27499931.html>
- [18] Reporters without Borders. 2015. Kazakhstan - Investigative Reporter Held Arbitrarily in Northeastern City. *Oximity user-generated news and content platform*. Available at: <http://oximity.com/article/Kazakhstan-Investigative...held...>
- [19] Sabera, I. 2016. The Struggle of Displaced Journalists in Ukraine. *Open Society Foundations website*. Available at: <https://www.opensocietyfoundations.org/>
- [20] Seferovskaya, I.Yu. 2013. Ensuring Information Security is One of the Key Aspects of the National Security. Proceedings of Conference: *The National Security of Kazakhstan – Contemporary Challenges and Threats*. Astana: NII KNB RK.
- [21] Stone, G.R. 2009. Free Speech and National Security. *Indiana Law Journal*, 84: 939-962.
- [22] Sviridov, A. 2016. Real Jail for a Quotation was replaced with Custodial Restraint with Diminishment in Rights. *The Kazakhstani International Bureau for the Human Rights and Law Enforcement, LLC*. Available at: http://bureau.kz/novosti...informaciya/realnyi_srok...citanu...
- [23] United States Department of State Bureau of Democracy. 2016. 2015 Country Reports on Human Rights Practices: Kazakhstan. *The Kazakhstani International Bureau for the Human Rights and Law Enforcement, LLC*. Available at: http://bureau.kz/en/monitoring...reports_on_kazakhstan/

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