



29 January 2026

**CENTRE FOR
LAW AND
DEMOCRACY**

Re. Constitutional Challenge Regarding Paragraphs 1-2 of Article 41-1 of the Law of the Republic of Kazakhstan “On Communications”

To the Members of the Constitutional Court of the Republic of Kazakhstan:

I am writing to you, as the Executive Director of the Centre for Law and Democracy (CLD), to express our views on this case. CLD is an international human rights organisation based in Canada which promotes foundational rights for democracy, including freedom of expression, globally. We are widely recognised for our peak-level legal expertise on these issues, which is recognised by all of the leading international human rights bodies.

We understand the basic facts of this case to be as follows. From approximately 5-10 January 2022, access to telecommunications services, including the Internet, were blocked in Almaty, Kazakhstan. This was justified on the basis of paragraphs 1-2 of Article 41-1 of the Law of the Republic of Kazakhstan dated July 5, 2004, No. 567 “On Communications”, which allow for this measure in urgent cases which could lead to the commission of serious crimes. The shutdown was challenged at three levels of courts in Kazakhstan, with each court accepting that the conditions of paragraphs 1-2 of Article 41-1 of the Law “On Communications” were met. The matter is now being brought before the Constitutional Court of the Republic of Kazakhstan, on the basis that these provisions fail to meet the conditions for restrictions on freedom of expression under the Constitution of the Republic of Kazakhstan and under international law, in particular the *International Covenant on Civil and Political Rights* (ICCPR).¹

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¹ UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976. Kazakhstan ratified the ICCPR on 24 January 2006.

Freedom of expression is guaranteed in Article 20(2) of the Constitution of the Republic of Kazakhstan, with the test for restrictions on rights being set out in Article 39(1), and in Article 19(2) of the ICCPR, with the test for restrictions on rights being set out in Article 19(3).

The test for restrictions on freedom of expression under international law (i.e. Article 19(3) of the ICCPR) involves a three-part test namely: 1) the restriction must be provided by law; 2) the restriction must aim to protect a legitimate interest; and 3) the restriction must be necessary to protect that interest. We are not experts in Kazakh law and so we will focus only on part three of this test, the requirement of necessity. We understand that this same requirement is found in Article 39(1) of the Constitution of the Republic of Kazakhstan.

This third part of the test is extremely complex. But a few key features can be drawn from authoritative statements about this part of the test, namely:

- restrictions should not be overbroad in the sense that they should not limit speech beyond that which is harmful to the relevant ground or interest;
- restrictions should be rationally connected to the ground they aim to protect in the sense of having been carefully designed to protect it and representing the option for protecting it that impairs freedom of expression the least; and
- restrictions should be proportionate in the sense that the benefits outweigh the harm to freedom of expression.

It is the position of CLD that no Internet shutdown is legitimate as a restriction on freedom of expression. And this position is primarily based on the fact that Internet shutdowns fail to satisfy the last requirement from among the three bullet points set out above, namely of proportionality, although they normally also fail to meet the first two requirements.

The impact of each Internet shutdown depends on the facts of each case, but every shutdown has a very dramatic impact on freedom of expression and many other rights and social interests. The longer the shutdown, the more extreme is this impact. This flows from the absolutely central role of the Internet in modern communications. Indeed, in almost every country in the world, the Internet, along with mobile phone communications systems, are the very backbone of communications.

CLD is not alone in taking the position that all Internet shutdowns are illegitimate. As far back as 2011, the four special international mandates on freedom of expression – the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information – stated in their Joint Declaration of 1 June 2011:

Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.²

² See <https://rfom.osce.org/fom/78309> for the Joint Declaration in English, Russian and Spanish. The special international mandates on freedom of expression have adopted a Joint Declaration every year since 1999, and with the support of CLD since it was founded in 2010.

Similarly, the UN Human Rights Council, the highest human rights body within the UN, stated in its most recent (2024) resolution on Promotion, protection and enjoyment of human rights on the Internet:

[We condemn] unequivocally measures in violation of international human rights law that prevent or disrupt an individual's ability to seek, receive or impart information online, as well as other measures that prevent or disrupt access to meaningful connectivity, including Internet shutdowns and online censorship, and measures that use digital technologies to silence, unlawfully or arbitrarily surveil or harass individuals or groups, including but not limited to, human rights defenders, journalists, media workers and civil society actors, calls upon all States to refrain from and to cease such measures, and also calls upon States to ensure that all domestic laws, policies and practices are consistent with their international human rights obligations with regard to freedom of opinion and expression and of association and peaceful assembly online.³

Even the relatively early 2003 Declaration on freedom of communication on the Internet, adopted by the Committee of Ministers of the Council of Europe before Internet shutdowns had even really manifested themselves as a phenomenon, essentially addressed this issue, as follows:

Principle 3: Absence of prior state control

Public authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.⁴

As regards this case, the fact that the Supreme Court of the Republic of Kazakhstan, along with two lower courts, approved an approximately five-day shutdown of the Internet in part of Kazakhstan demonstrates clearly the lack of proportionality of paragraphs 1-2 of Article 41-1 of the Law "On Communications". We therefore urge the Constitutional Court of the Republic of Kazakhstan to strike these provisions down as unconstitutional.

Yours sincerely,



Toby Mendel
Executive Director

³ Resolution 57/29, A/HRC/RES/57/29, 14 October 2024, para. 9, <https://digitallibrary.un.org/record/4064003?ln=en&v=pdf>.

⁴ Adopted 28 May 2003, <https://rm.coe.int/16805dfbd5>.