

Countering Extremism vs. Freedom of Online Expression: The Case of Kazakhstan

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The series of terrorist attacks that took place in 2011, 2012 and 2016 in Atyrau, Aktobe and Almaty reveal Kazakhstan's need to rethink its internal security policies. Strengthening the legitimate use of force to ensure domestic security is necessary, yet the state's current approach also demonstrates a major shift in the balance between citizens' civil liberties and security, to the detriment of the former. Indeed, the Kazakh government's efforts to counter extremism and

terrorism have led to a significant level of securitization within the country, in particular challenging freedom of online expression.

Since 2014, over 325 Kazakhstani citizens have been accused of inciting national, racial, religious, and social hatred, receiving prison sentences of between 2 and 7 years. Article 1 of the National Law on Countering Extremism of 2005 interprets incitement of hatred as extremism. Whereas in some cases the charges were

the result of obvious opposition activity by activists, who turned out to protest certain political decisions, in other cases, people broke the extremism law unknowingly.

Though the state puts great effort into countering religious extremism, the terminology of the extremism law is vague and confusing. Are extremism and incitement of hatred synonymous? Can violations of territorial integrity and sovereignty be considered extremism, or are these crimes connected to separatism? What indicators for extremism or incitement of hatred should be incorporated into the law? Not only should the terminology of the law be improved, but public information campaigns regarding it are needed to help citizens better understand what the law prohibits and permits. Otherwise, it is likely that simple ignorance of the content of the law will result in a growing number of people being arrested unnecessarily on charges of inciting national or religious hatred in the years to come.

The paper discusses the need to develop public information

campaigns that would educate Kazakhstani citizens about extremism-related laws and practices. I start by analyzing the legal framework and discussing the vague terminology employed. Next, taking real court cases as examples, I show how the law is applied. Finally, I highlight some popular perceptions of extremism in order to demonstrate ordinary people’s ignorance that they might be transgressing the law. On the basis of these findings, I argue that educating people about extremism would increase their knowledge on the subject, thereby helping bridge the gap between the law and its application.

Legal Provisions on Extremism in Kazakhstan

The rise of social media has made it easier for individuals to express themselves online—and simultaneously harder for

the government to control that expression.¹ Leaving human rights rhetoric and debates aside, it is necessary to examine existing legislation and terminology in order to get a sense of what people can be prosecuted for.

The Constitution of Kazakhstan guarantees freedom of expression,² but this right is qualified by several laws and de facto restricted. Two documents—the Law on Countering Extremism and the Penal Code—address the limitations on freedom of expression in the name of state and societal security. The former introduces terminology and outlines behaviors that are treated as acts of extremism, while the latter addresses prosecution and its justifications.

Law on Countering Extremism

Article 1 of the Law on Countering Extremism describes three types of extremism: political, national and religious. (See Table 1.) Though the document provides definitions, these types remain vague. It is unclear whether the term “incitement” refers to words, actions, or both; the meaning of the word itself is obscure. Nevertheless, the law sends a clear message that calls for violence will be treated as extremism even if physical actions do not necessarily follow.

Threats to the country’s territorial integrity and sovereignty are considered one of the most significant challenges to national security. Yet this and other actions included in the broad category of “political extremism”—

Table 1. Types of Extremism

Political Extremism	Violent change of the constitutional system; violation of the sovereignty and integrity of the state; undermining the national security and defense capability of the state; forcible seizure of power or forcible retention of power; creation of, leadership of, and participation in illegal paramilitary formations; organization of armed rebellion and participation therein; incitement of social or class hatred.
National Extremism	Incitement of racial, national, or tribal hatred, including actions related to violence or calls for violence.
Religious Extremism	Incitement of religious enmity or hatred, including actions related to violence or calls for violence, as well as any religious practices that threaten the safety, life, health, morals, or rights and freedoms of citizens.

Source: Law on Countering Extremism, Kazakhstan (2005)³

including actions against the constitution and violent threats to national security—could also be considered under many other categories of crime, for instance separatism. For all three types of extremism, words are sufficient for an accusation of incitement of hatred, making it easier to charge an individual with one of these crimes.

Penal Code Provisions

The penalty for the crimes described above is discussed in Kazakhstan’s Penal Code, Chapter 4, “Crimes against Peace and Security,” Article 174, “Incitement of Social, National, Racial, Class, or Religious Hatred.” It reads:

“Intentional actions, directed to incitement of social, national, 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 on the grounds of their religion, class, national, generic, or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, generic, racial, class, or religious hatred, shall be punished with 2 to 7 years of restrictions on freedom or imprisonment.”⁴

The sentence can even be extended to 20 years, depending on who committed the crime, their motivation, and the

consequences of the act.

The vagueness of the terminology used in this statement makes enforcing Article 174 difficult. In the case of online freedom of expression, for instance, it is difficult to determine an actor’s intentions and distinguish actions from words. As such, the wording of Article 174 ought to be clarified. Indeed, Kazakhstani lawyers and human rights activists made several attempts to abolish the law’s latest amendment in 2015, on the grounds that the wording was too vague, allowing the government to use the law on a case-by-case basis to punish opposition activists.⁵

The Kazakhstani government pays special attention to calls for violation of the country’s territorial integrity and sovereignty. For instance, Kazakhstani policymakers introduced new norms on separatism to the Penal Code following the annexation of Crimea in 2014.⁶ In this regard, Kazakhstan is very much emulating Russia: Russian President Vladimir Putin increased the prison sentence for separatism from 3 to 5 years.⁷

The Rise in the Number of People Arrested on Charges of Extremism

The number of cases of extremism has grown significantly over the past four years, almost reaching the number of those prosecuted for terrorism and terrorism-related activities. In 2016, 151 cases of incitement of national, religious, racial, and social hatred were registered in the country,

almost twice the figure recorded in 2015. Of these, 66 were sent to court,⁸ whereas the Kazakhstan International Bureau for Human Rights and Rule of Law Public Fund reported that 10 and 8 activists were prosecuted under Article 174 in 2015 and 2014, respectively.⁹ The figures even increased over the course of 2017: in January, local courts registered 84 cases of incitement of hatred, and 13 people were arrested,¹⁰ whereas in September, the number of criminal cases reached 208.¹¹ Overall, the Kazakhstani courts opened 1,039 Article 174 cases in 2017,¹² compared to a combined 131 in the 2008–2012 period.¹³

Starting in 2014, people in Kazakhstan were sporadically arrested for posting certain content on social media, in particular on Facebook, VKontakte and Odnoklassniki. These individuals were prosecuted for inciting national, racial, religious, class, and social hatred.

Aktobe resident Sanat Dossov was sentenced to 3 years in prison for posting negative statements about Russian President Vladimir Putin and his political course on Facebook.¹⁴ Igor Chuprina from Sokolovka village in northern Kazakhstan received a 5-and-a-half-year prison sentence for insulting ethnic Kazakhs and calling for Kazakhstan’s accession to Russia on VKontakte.¹⁵ An Almaty resident, Shukhrat Kibirov, was accused of posting Islamic songs on VKontakte.¹⁶ Sergei Khandogin from the northern city of Petropavl was

sentenced to 2 years in prison for “insulting the dignity of Kazakhs by promoting Russian superiority”¹⁷ on Odnoklassniki.

Trends in the Law and Its Application

To show how inconsistent and controversial are the law and its application in the country when it comes to incitement of national, religious, racial, class, and social hatred, I have created a table of court cases that have been publicized and are therefore open to public scrutiny. (See Appendix A.)

These cases show how vulnerable a person can be while expressing his or her beliefs and ideas online. On the one hand, these cases are not political, and the victims are not known activists or opposition representatives. On the other hand, the table shows that both authors and those who repost materials that incite hatred can be prosecuted.

Evidently, therefore, Kazakhstan’s approach to dealing with extremism is controversial. The country is trying to balance protecting freedom of expression with securing public order. However, in most cases of incitement of national, racial, religious, and social hatred, public order has been securitized and politicized. It is also difficult to prove whether such comments, materials and posts intend to incite hatred or not.

When it comes to investigation, the prosecutor requests an evaluation report assessing the

comments of those purportedly inciting hatred and identifying intentionality. Dr. Rakhilya Krymsakova, one of the expert authors of Kazakhstan’s 2006 methodology on identifying instances of incitement to hatred, believes it should be revised. She explains, “It does not provide the whole algorithm. The mechanism of ‘inciting hatred’ is unclear and vague, as people can be arrested for posting negative comments against certain groups. It is necessary to indicate a person’s followers, readers and listeners, as well as their intention to commit violent actions. However, these elements are not clearly defined.”¹⁸

Another issue with the law’s application is that language specialists—and not political scientists or psychologists—should be the ones identifying hate speech. More importantly, the country’s current methodology on cases of inciting hatred is based on words, not actions, as the key component of evidence and charges. Alma Mussina, a prominent Almaty lawyer, contends that individuals should be prosecuted for incitement to hatred only when actions cause significant damage or result in grave consequences.

In addition, many cases described in Appendix A provide no information regarding people’s reaction to social media posts that purportedly incite hatred. For instance, in some cases in northern Kazakhstan, provocative hate speech against the person who incited hatred was promptly deleted, and people who

used provocative and offensive language to call for violence were not prosecuted. These examples show that Kazakhstan’s approach to dealing with this controversial issue results in a selective justice system, making it more difficult for the government to properly address extremism-related issues and cases.

Finally, the fact that people will no longer be able to comment anonymously on online platforms also makes the law’s application problematic. On November 22, 2017, the Mazhilis of the Kazakhstani Parliament adopted amendments to the laws on information and communication, banning anonymous comments without registration and SMS-based identity proof.¹⁹ This innovation makes people even more vulnerable, as their identity will be verified and can be provided to government agencies by the website’s host. Without appropriate methodology, a clear law, and transparent application thereof, this amendment could cause more damage when it comes to incitement of hatred.

Variations between Regions

The cases also show the complexity of the situation regarding freedom of online expression and countering extremism in the country. People accused of inciting national hatred are of varying ages and different ethnicities.

Whereas western Kazakhstan is considered vulnerable to religious extremism,²⁰ people from the central and southern parts of the

country, who have diverse ethnic origins, have rarely been arrested for inciting hatred. Kazakhstani news platforms reported on just two court cases, in Kyzyl-Orda and Shymkent, providing no names of the arrested, in contrast to reports on other parts of the country. By contrast, people from northern Kazakhstan have been arrested on charges of inciting national hatred more frequently than those from other parts of the country. Historically, this territory, as well as the Altay region, was part of Russia. Since independence in 1991, the issue of northern Kazakhstan's possible secession and integration into the Russian Federation has become a very sensitive one for Kazakhstani policymakers, making it highly politicized. Moreover, anti-Russian sentiments and phobias have multiplied in the country since the annexation of Crimea in 2014.

Kazakhstani citizens convicted of separatism usually receive longer sentences than those imprisoned for extremism and terrorism-related crimes, including Islamist propaganda. The court cases described below emphasize how sensitive and politicized sovereignty and territorial integrity are for the country; posting comments on these issues is therefore more likely to get an individual arrested. For instance, in 2015, Igor Sychev, an online community host on VKontakte, received a 5-year prison sentence for posting a poll in which residents of Ridder (an industrial city in eastern Kazakhstan) could vote for or against joining Russia.²¹ By

comparison, in 2013, Baurzhan Zhanburshin from Aktobe, with a group of 13 like-minded people, promoted religious hatred²² and received “only” a 3-year sentence. A 25-year-old resident of Kyzyl-Orda was sentenced to 2 years and 10 months’ probation for inciting religious hatred on social media, with police officers seizing audio records as evidence.²³ A Temirtau resident was sentenced for terrorist propaganda on social media and received 3 years in prison, as well as having his property confiscated.²⁴ In November 2017, Mr. Gaisin was arrested for writing “Kill Kazakhs like dogs” at the bus stop in Astana—he received 3-and-a-half years in prison and treatment for alcoholism.²⁵

The issue of the eastern and northern parts of the country remains very controversial for Kazakhstani people and is politicized for the government. On the one hand, Kazakh policymakers emulate their Russian colleagues, adopting similar laws against extremism, terrorism and separatism. On the other hand, public opinion surveys demonstrate that people remain genuinely sensitive to issues of national identity, sovereignty, and territorial integrity; Russian actions against Ukraine are regularly held up as evidence that Kazakhstan’s sovereignty and territorial integrity should be securitized lest they be threatened by Russia. The rise of nationalism makes it easier to find oneself enmeshed in legal controversy and accused of extremism.

One of the most interesting survey findings is that identity issues and inter-ethnic relations remain very sensitive, both for ordinary people and for the government. Ten percent of my respondents indicated that a negative attitude toward other ethnic groups could be treated as extremism. A recent hate speech report prepared by the MediaNet International Center for Journalism and the Konrad Adenauer Stiftung shows how Kazakhstanis use hate speech on Facebook.²⁶ Based on the report, it is clear that most Facebook posts containing hate speech can be classified as “soft” discrimination against ethnic or religious groups, namely ethnic minorities and the country’s neighbors, mostly China and Russia. Interestingly, ethnic Kazakhs are more likely to use “hard” discrimination tools when it comes to hate speech on Facebook, from insulting other ethnic groups to calling for violence.

Another Piece of the Extremism Puzzle: Lack of Education and Awareness

Another important element in understanding efforts to counter extremism and support freedom of online expression is the lack of education about what constitutes extremism. To illuminate the gap between the law, legal practice, and people’s knowledge (or not) of extremism, I conducted an online survey (see Appendix 2). It consists of three main lines of questioning: people’s perceptions of freedom of online expression, their understanding

of extremism, and education about extremism. I reached 100 people aged 18 to 60 from across the country, including the cities of Almaty and Astana, who use more than two social media platforms and applications regularly. The analysis of the survey results is supported by the study of court cases, which shows people of different ages, ethnicities and geographic locations getting arrested for incitement of hatred.

To complement the survey results and strengthen the argument for increasing public awareness, I analyzed almost 300 comments that ordinary people published about the court cases, both on social media—Facebook and VKontakte—and on news platforms (TengriNews, Nur.kz, Karavan, Ratel, and Today). Some of the comments are full of hate speech and provocations. Others were deleted by moderators for being inappropriate.²⁷ However, the overall bent of these comments is toward issues

of national identity and inter-ethnic relations, as exemplified by those related to Igor Chuprina’s case.²⁸ That is, people do not know—intellectually or emotionally—where the “red line” that marks incitement of national or religious hatred lies. Moreover, they are unaware that they can be prosecuted for publishing comments deemed hateful online. Responses to cases like Chuprina’s and Sychev’s usually include offensive language: “your head is first on a spit, pig” and “go to Russia, intruder.”²⁹

Here are some of the insights the survey provides for understanding what people think about freedom of online expression, extremism, and education:

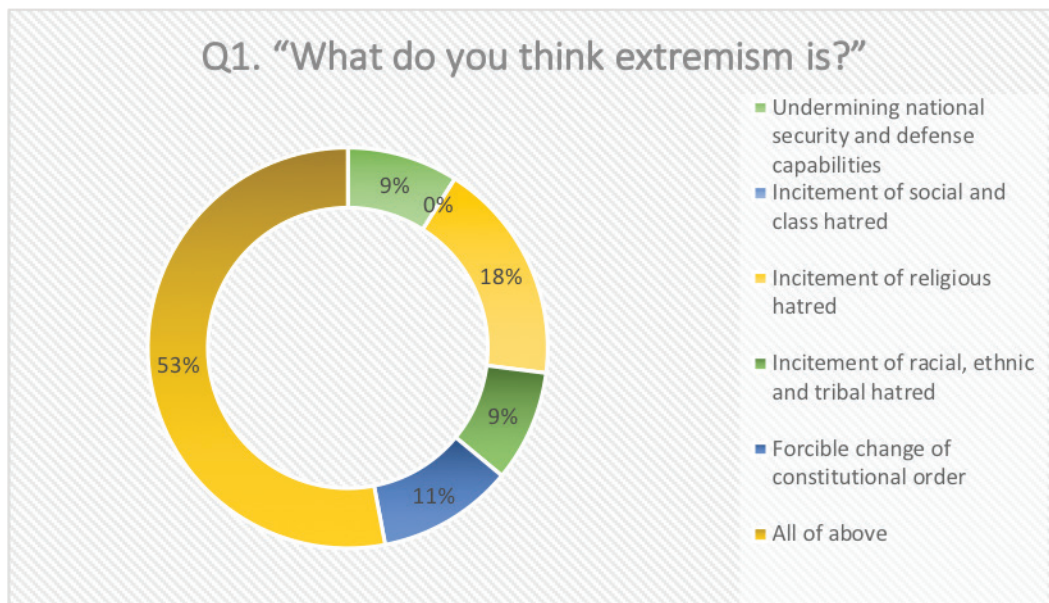
Popular Perceptions of Extremism

To understand people’s perception of extremism, I asked two questions. The first was “What do you think extremism

is?”; the second, “Choose one of the options you think could be extremism.” Whereas the first question is about the terminology of extremism as defined by the law, the second is based on documented arrests and real court cases. The diagram for Question 1 indicates people’s perceptions of what extremism means, based on the National Law on Countering Extremism of 2005.

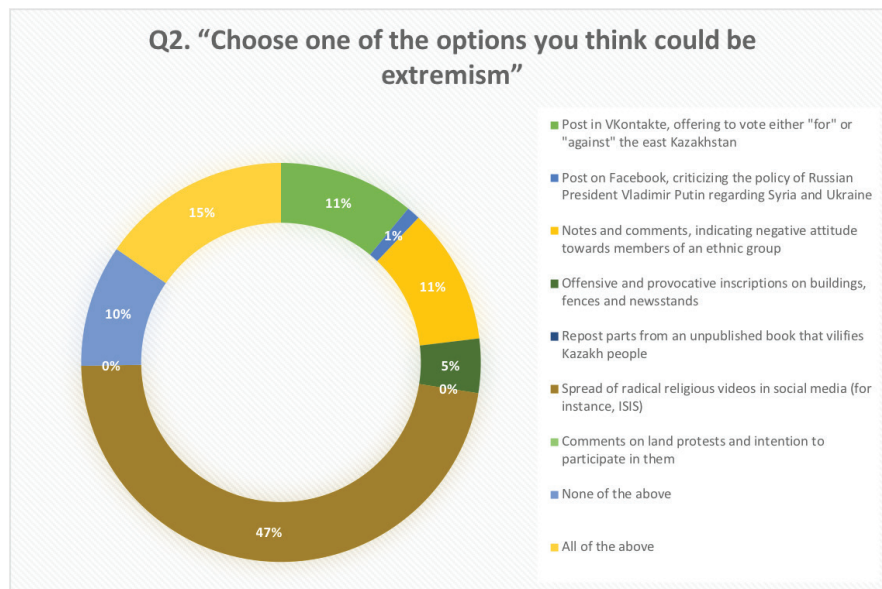
In Figure 1, it remains difficult to interpret what the 53 percent of people who selected the option “all of the above” meant by it. It could be that they really knew the intricacies of the law; equally, it could just have been a guess. In any case, a significant finding of the survey is that 18 percent of respondents associate extremism with religious hatred. Yet only 9 percent indicate that extremism can be something related to either national security and defense or to incitement of racial, ethnic and tribal hatred. This result might indicate that people are unaware

Figure 1. What Do You Think Extremism Is?



Source: Based on author’s survey

**Figure 2. Choose One of the Options
You Think Could Be Extremism**



Source: Based on author's survey

of the fact that policymakers see political extremism—namely the violation of territorial integrity and national sovereignty—as a significant threat to the country's national security. Most importantly, people are unaware that they can receive a longer sentence for posting online about the abovementioned issues, despite the fact that the number of such arrests is growing rapidly.

The second diagram helps clarify whether people are familiar with the court cases—whether they follow the news about these cases and can recognize specific cases. The multiple-choice options provided in the question represent real court cases in which people were arrested for inciting hatred. Survey participants were able to choose only one option that they believed could be seen as extremism. When it comes to social media and extremism, people have great

difficulty determining which actions or words online might lead to prosecution. Interestingly, the survey shows that, of the various options, people are most likely to associate extremism with religious extremism. It may seem that people are aware of the general trends³⁰ in fighting extremism and terrorism in the country, however it is not that simple. People think ISIS propaganda is religious extremism, but the law connects it to terrorism—a crime that, under the Law on Combating Terrorism of 1999, carries a much longer prison sentence.

Based on the survey results, I argue that people get confused by the terminology and definitions. They are also unaware of existing laws and programs related to countering extremism. Few know that extremism can be non-religious and “something else”: calls for—or action promoting—

violation of sovereignty, territorial integrity, or constitutional order, as well as ethnic hatred.

Additionally, research on publicized information about arrests indicates that the majority of those arrested broke extremism laws unknowingly and denied their guilt, while a minority were convicted for intentionally expressing an opinion forbidden by the law. This is evidenced by the statements of the accused, which were published on online news platforms. Some people voice their innocence in court, one of the best examples being Shukhrat Kibirov's final statement in court, where he denied his guilt.

Only 4 percent of survey participants thought offensive and provocative statements could be considered extremism. This suggests that overall, people believe that extremism is more about words than actions.

Furthermore, almost 10 percent of survey participants indicated that none of the cases could be considered acts of extremism. This might indicate that people are unaware of what extremism means and what actions may be prosecuted as extremist acts. Instead, they categorized these cases as examples of another offense, such as bullying, harassment, or vandalism.

People Are Not Safe on Social Media

One of the most significant findings of the survey is the popular sense of insecurity on social media. The public does not see social media as a tool for expressing ideas and beliefs freely and openly. As seen in Figure 3, 48 percent consider social media unsafe as a platform for communication and self-expression.

Even though the survey does not reveal why people feel insecure, it shows that they might be afraid to express their ideas and beliefs online. One reason for this could be rooted in Kazakhstan’s most recent efforts to control the internet, namely restrictions on connectivity, malware attacks, and arrests of social media users.

Freedom House, in its report “Freedom of the Net 2017,” explains that the country remains “not free,” emphasizing that “Kazakhstani authorities [have] used criminal charges against social media users in an effort to silence dissent and punish online mobilization.”³¹

Despite the belief of 11 percent of survey participants that they can write and comment freely on social media, the vague extremism law and outdated methodology for its implementation make

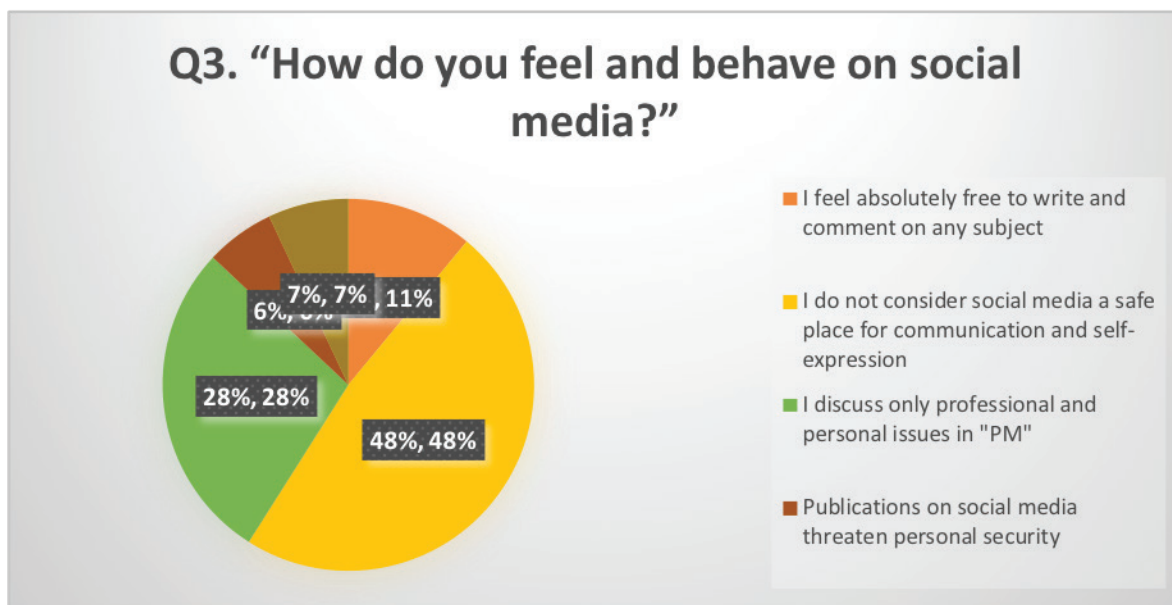
them vulnerable to existing legal contradictions nevertheless. Nikita Danilin, a journalist at *Karavan*, one of the country’s oldest newspapers, believes that people get into controversial legal traps due to their legal illiteracy. He indicates that there are actually many more such cases than are reported.³²

People Want to Know More about Extremism

As shown in Figure 4, 80 percent of survey participants were interested in legal literacy and awareness regarding extremism.

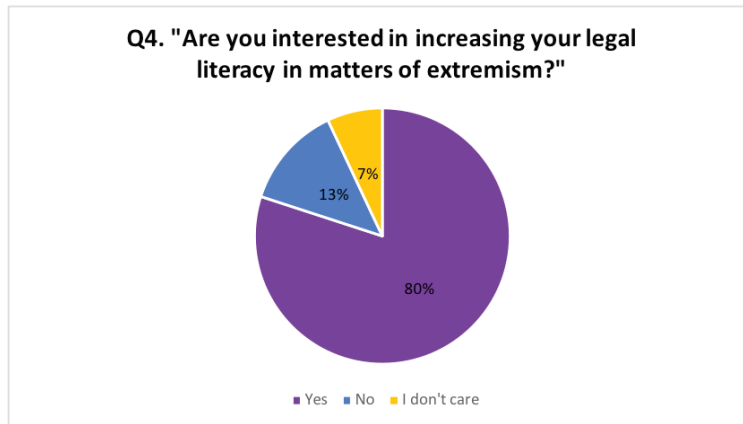
People think that it is the responsibility of the state to educate them about extremism. Sixty-six percent of survey participants indicated that it was the responsibility of the government to educate them about extremism.

Figure 3. How Do You Feel and Behave On Social Media?



Source: Based on author’s survey

Figure 4. Are You Interested In Increasing Your Legal Literacy In Matters of Extremism?



Source: Based on author's survey

On one hand, this result is not surprising. People are used to thinking about the state as a provider of solutions to existing problems; moreover, the state controls the education system and bears responsibility for educating its citizens.

On the other hand, it would be very problematic for the government to educate people about extremism. Firstly, the topic is highly politicized and securitized, and the state being both judge and party, it is therefore not a neutral actor. Secondly, it is unclear which agency could be tapped to educate people about extremism.

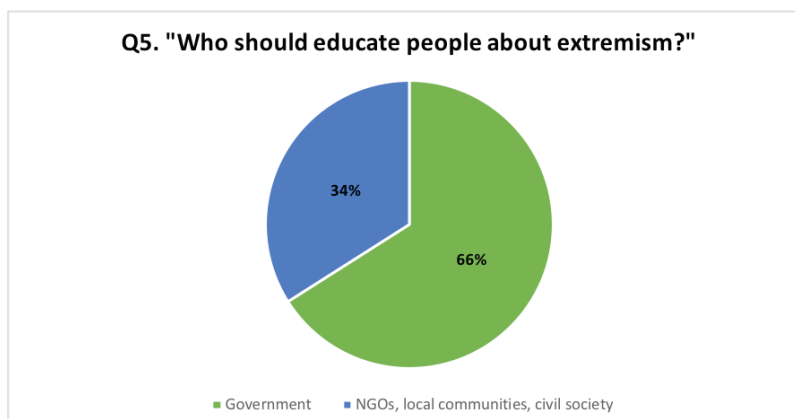
The Ministry of Education and Science, an obvious choice, has been going through major reforms: trilingualism, curriculum updates, and revision of the school calendar. It is not clear how it would be able to juggle programs on extremism with the numerous programs already on its plate. Ministry of Justice could be another one, but it is even more both judge and party in this question.

Because the extremism law remains vague and the outdated mode of investigation makes people vulnerable, government is probably not the solution but

part of the problem. As such, grassroots education campaigns and initiatives supported by local communities and NGOs might be the best way for Kazakhstan to bolster its anti-extremism efforts while allowing people to safely navigate social media and enjoy freedom of online expression without prosecution.

A comparative approach may provide some insight into how other governments are tackling this controversial issue. I therefore turn to an analysis of existing legal practices in the world today.

Figure 5. Who Should Educate People About Extremism?



Source: Based on author's survey

Comparative Cases on Security versus Freedom of Expression

Balancing security and freedom is important in many different contexts. Even though freedom of speech and expression is guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and countries' constitutions, it can be restricted by civil or criminal laws for the protection of national security or public order.³³

Article 20 of the International Covenant on Civil and Political Rights (ICCPR) states that “any advocacy of national, racial or religious hatred that constitutes incitement of discrimination, hostility or violence shall be prohibited by law.”³⁴ At the same time, Article 19 of the ICCPR provides for freedom of expression, including the 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.”

In some countries, only statements that constitute a real and immediate threat of violence against a particular person are considered to be illegal. In others, legislation punishes oral, written or symbolic statements that promote or incite hatred based on discrimination. With social media platforms, it has become much easier to incite hatred that could lead to a fine or a prison sentence.

“No Penalty, No Ban” Approach

Having analyzed the existing practices, I would elucidate three main approaches to dealing with incitement of hatred online. The first is “no penalty, no ban,” where the government allows unlimited freedom of online expression with no restrictions or punishment for people, while cooperating with social media companies to curb hate speech online. One of the best examples here is Japan, which is trying to adequately address the issue while respecting freedom of expression.

Japan has been criticized by the Secretary General of the United Nations for turning a blind eye to hate speech in terms of regulation and legislation. Finally, in 2016, the country adopted the Hate Speech Act, which neither bans nor penalizes hate speech; it targets only threats to an individual's person or life.³⁵ Those who were not satisfied with the law protested, demanding that the Tokyo office of Twitter do more to address harassment and hate speech on the platform.³⁶ According to Tokyo No Hate Initiative, 40 million people in Japan currently experience or contribute to hate speech online, particularly on Twitter.³⁷ Japanese society and the Ministry of Justice are currently debating the vague terminology of the law. The wording can be interpreted as labeling hate speech either “unforgivable,” in the sense of being morally reprehensible, or “not allowed,” which would imply illegality.³⁸ In addition, the Japanese government is cooperating with the Twitter

office in Tokyo to delete content or suspend an account if hate speech is found.

Japan respects freedom of online expression. The existing legal framework does not allow arrests for online hate speech, unless this speech could lead to physical acts that threaten an individual's person or life.

The “Comprehensive” Approach

Another way to deal with incitement of hatred on social media is to take a comprehensive approach that combines legislation with clear terminology, education and awareness, along with targeting social media companies (not individuals) to address incitement of hatred online. This approach has been introduced in many European countries, including the Netherlands and Germany, as well as the United States.

At the EU level, the European Court of Human Rights does not provide an accepted or agreed-upon definition of hate speech. However, it offers guidelines by which prosecutors can decide if the hate speech is entitled to freedom of speech protections,³⁹ including whether the speech is anti-Semitic or promotes intolerance toward Muslims. Though ECHR hate speech cases are often related to these groups, the overall number of arrests for hate speech remains comparatively small. In addition, the Council of Europe has launched a “No Hate Speech” campaign to educate people and

raise awareness of the issue.

Among the most interesting examples are the Netherlands and Germany. The first has one of the clearest definitions of incitement of hatred, making it relatively easy to deal with these criminal cases. Article 137 of the Dutch Penal Code interprets incitement of hatred as follows:

He who publicly, orally, in writing or graphically intentionally expresses himself insultingly regarding a group of people because of their race, their religion or their life philosophy, their heterosexual or homosexual orientation or their physical, psychological or mental disability, shall be punished by imprisonment of no more than a year or a monetary penalty of the third category.⁴⁰

For its part, Germany is considered one of the most proactive countries when it comes to dealing with incitement of hatred online. The country has a stringent law against online hate speech; its efforts to eliminate incitement of hatred online also target digital platforms such as Facebook, Google, YouTube, and Twitter. These platforms are required to delete hate speech and other extremist messages within 24 hours. Failure to do so results in a USD\$5 million to USD\$59 million fine.⁴¹ Incitement of hatred (*Volksverhetzung*) is punishable in Germany if committed by German citizens abroad or by non-German nationals on German territory.

Another example is the United

States. After the terrorist attacks of September 11, 2001, the U.S. government introduced the PATRIOT Act, which has become an instrument to guide responses to terrorism and violent extremism in the country.⁴² Though the law has been repeatedly criticized for violating human rights, the country's counter-terrorism measures have been essential to preventing terrorist attacks on American soil since 9/11. This is balanced against the First Amendment of the U.S. Constitution, which prevents Congress from legislatively limiting freedom of speech, including online.⁴³ Individuals therefore enjoy freedom of speech and cannot be prosecuted for posting certain content on social media so long as their words online do not cause physical actions.

The "Authoritarian" Approach

The third approach—authoritarian—is widespread in sub-Saharan African, Asian and Middle Eastern countries. This approach is known for stringent, vague legislation and a lack of popular education. The governments' efforts to securitize an existing problem have led to people being arrested for inciting hatred online.

In Bangladesh, for instance, anyone can be prosecuted for publishing "false and obscene" material on the internet or in digital form.⁴⁴ A Bangladeshi blogger living in exile in Sweden mentioned that a comment or "like" on Facebook that is perceived to threaten law and

order, prejudice the image of the state or a person, or damage religious beliefs could result in a 7–14-year prison sentence and a fine of up to USD\$120,000.⁴⁵ From the government's perspective, these measures are a response to the harassment of religious minorities—namely Hindus—in the country. The Prime Minister's internet and communications technology advisor mentioned in an interview that Bangladesh will not allow terrorists to use the internet to spread falsehoods or multiply the effects of their actions.⁴⁶

Egypt, meanwhile, has made significant progress on educating journalists to identify hate speech and report on it ethically, using a five-point test for hate speech.⁴⁷ In addition to this, Ethical Journalism Network, American University in Cairo, and Egypt Media Development Program joined together to launch the Glossary of Hate Speech.⁴⁸ In so doing, Egypt became the first Arab state to introduce a hate speech initiative. It will be some time before the effectiveness of this instrument can be determined, but raising awareness among young journalists and media specialists of how to deal with online content that incites hatred and terrorist propaganda is certainly necessary.

As the above examples show, it is extremely difficult for governments to deal with incitement of hatred and hate speech online. That being said, a legal framework with clear terminology, the rule of law, and

education about the issues can all make a positive difference.

Recommendations

In view of the survey results, case studies, and comparative overview of different approaches to the issue, I propose a series of recommendations that would help the Kazakhstani government counter extremism and adequately address the issue of incitement of hatred while simultaneously respecting freedom of online expression.

Reformulate the Law on Countering Extremism and Article 174 of the Penal Code

The law's vague and overlapping terminology makes it easy to accuse individuals of a crime, but difficult for the government to elucidate which crimes constitute extremism (rather than hate speech or incitement of hatred). People's perceptions of extremism, highlighted in the survey results, show how difficult it is to understand what extremism is and what actions or words online can be treated as acts of extremism.

It is necessary to establish a working group on incitement of hatred that would include many stakeholders: lawyers, members of Parliament, representatives of security agencies, language specialists, and human right activists. The group's goal would be to formulate clear definitions of incitement of hatred, hate speech and extremism.

Introduce the Law on Countering Extremism during civic education classes in secondary schools

According to my survey results, Kazakhstani people want to be educated about extremism. And if the law targets people, rather than social media platforms (as is the case in Germany), people should be educated about controversial issues that may arise when they "like," share, or post certain content on social media. One of the fundamental ways to educate people is to teach them what the law permits and what it prohibits, and how to manage online risks. Young schoolboys and schoolgirls use different social media platforms, and they should be aware that irresponsible behavior online could potentially result in a prison sentence. Introducing these issues into the school curriculum would also help increase digital literacy and build digital resilience.⁴⁹

The curriculum-based approach should become a key component of efforts to prevent extremism and increase legal literacy at large. In this regard, Kazakhstan could benefit greatly from UNESCO guidance tools for policymakers and teachers. *A Teacher's Guide on the Prevention of Violent Extremism* is a concise and practical reference guide for teachers and educators at the upper primary/lower secondary level; it discusses how to manage classroom discussions about controversial issues with a view to preventing violent extremism.⁵⁰ The text could be used as a starting point, filling

in the gaps until the Kazakhstani government develops its own guide. As an additional benefit, open classroom discussions could significantly reduce the incidence of young people becoming radicalized.

Invest in professional training of state officials

Given the country's outdated methodology and expertise problems when it comes to incitement of hatred crimes, it is necessary to significantly increase the professionalism and expertise of the government agencies that tackle this controversial issue on a daily basis.

In this regard, a pilot project under the Academy of Public Administration of the Republic of Kazakhstan could provide a starting point for advanced training of lawyers, judges, law enforcement officials, and criminal law faculty. Simulation games and exercises on incitement of hatred should become a key component of these trainings. Kazakhstani officials could consult with the Global Freedom of Expression initiative at Columbia University, which has produced training materials, manuals, etc. for judges on the issue.⁵¹ Judicial training is vital, since the judiciary should play a key role in balancing national security against the protection of human rights, including freedom of online expression. One of the project's exercises⁵² touches upon the mechanism of how the courts find out whether incitement has occurred: the courts must find

would result; and a causal link between the speaker's intention and violence. In the long term, professional training on the issue would result in respect for the rule of law and equality before the law, thereby ending selective justice in Kazakhstan.

Launch a comprehensive online hate speech prevention project

Citizens should know their rights and responsibilities, and the government should provide an opportunity for citizens to learn them. In this regard, grassroots literacy campaigns should become a key strategy for preventing people from falling into legal traps. Social media can serve as a platform for increasing users' literacy regarding extremism laws—especially laws that can be used against them if they make certain comments online.

Requiring a glossary of hate speech in the Russian and Kazakh languages would both help people use social media responsibly and make it easier for journalists to do their job professionally. The Egyptian example might provide a good point of departure for such a project. In addition, hate speech codes would help people respect freedom of speech. Furthermore, the survey results suggest that people want more educational videos and trainings on social media to help them learn about extremism. Grassroots initiatives, backed by local communities and NGOs, could support the country's counter-extremism efforts without sacrificing freedom of online expression.

Conclusion

Kazakhstan, like many other post-Soviet states, has been struggling to balance freedom of online expression with public order. Vague laws, including Penal Code provisions, and their controversial application, on the one hand, and lack of education regarding extremism and hate speech, on the other, make people vulnerable to existing state approaches to maintaining public order and national security. It seems that securitization has become an ad hoc solution for very complex issues like territorial integrity, sovereignty, and religious extremism. Even though the existing legal framework sees actions as the primary indicator of calls for violence or incitement of hatred, people get arrested for words that have been posted online and which have not necessarily been followed by physical actions.

The examples I mentioned above show how difficult it is for governments to balance freedom of speech and online expression with national security. Some countries have succeeded in doing so, while others have failed. Some countries have vague laws with controversial application; others have adopted laws with clear definitions and invested in raising awareness and educating people. It is obvious that there is no single formula for tackling the issues of incitement of hatred and online expression. That being said, there are certain approaches that have proven to be successful, primarily relating to people, who should be empowered to

safely navigate social media and help the government prevent the spread of extremism. Raising citizens' awareness and educating them is the best way to achieve these goals.

Appendix A. Table of Incitement of Hatred Court Cases⁵³

Case		Where	Outcome
Tatyana Shevtsova-Valova committed acts aimed at inciting national enmity and discord and insulting the national honor and dignity of citizens, as well as propaganda on the superiority or inferiority of citizens on the basis of their nationality, using abusive language. According to her, the case was fabricated and the screenshots were forged to slander her.	2015	Almaty	Incitement of national hatred 4-year prison term with a 3-year probation, plus legal costs of 48,500 tenge (USD\$145)
Anti-Heptyl activist Saken Baikenov was arrested for inciting national hatred. He admitted at the trial that he wrote all the posts posted on his behalf on Facebook. He cannot participate in political and public events, leave the city without court permission, or go to nightclubs.	2015	Astana	Incitement of national hatred on Facebook Restriction of freedom for 2 years
Mr. Alkhanashvili published and distributed materials that incite inter-ethnic hatred and enmity, and which offend the national sentiments of representatives of other ethnic groups. He published such materials against both the Russian-speaking population and Muslims.	2015	Petropavl, Northern Kazakhstan	Incitement of national hatred 3-year prison sentence
Sanat Dosov was sentenced for insulting Russian President Vladimir Putin on Facebook. During the investigation, he recognized only a few publications, and assumed that his page had been hacked. Initially, the expert the court called to analyze Dosov's publications did not find anything criminal. Later, however, the expert reversed his point of view. Dosov established Ikhtiyar public association, which works to prevent religious extremism.	2016	A k t o b e , E a s t e r n Kazakhstan	Incitement of social hatred 3-year prison sentence
Igor Chuprina from September 1, 2014 to May 20, 2015, under the nickname of Igor Chupa, published various notes and comments that indicate his negative attitude toward the Kazakh ethnicity, as well as calling for accession to Russia on VKontakte.	2016	Sokolovka, Northern Kazakhstan	Incitement of national hatred and propaganda of violation of territorial integrity 5-and-a-half-year prison sentence
Ruslan Ginatullin published materials from Hizb ut-Tahrir al-Islami on his Facebook page and posted a video that negatively characterized the Russian ethnicity. He was also charged with participation in a criminal organization.	2016	Pavlodar, Northern Kazakhstan	Incitement of national hatred 6-year prison sentence
Sergei Khandogin used negative words insulting ethnic Kazakhs and cited materials that distorted historic facts on Odnoklassniki.	2017	Petropavl, Northern Kazakhstan	Incitement of national hatred 2-year prison sentence

Appendix B. The Survey

1. По вашему мнению, ограничена ли свобода слова и самовыражения в Казахстане, в том числе?

- А. Да, ограничена – 35%
- Б. Частично ограничена – 53%
- В. Нет, не ограничена – 12%

2. Насколько свободно вы чувствуете и ведете себя в социальных сетях на данный момент?

- А. Абсолютно свободно пишу и комментирую по любой тематике – 11%
- Б. На считаю социальные сети безопасным местом общения и самовыражения – 48%
- В. Обсуждаю исключительно профессиональные и личные вопросы в «личке» - 28%
- Г. Публикации в социальных сетях угрожают личной безопасности – 6%
- Д. Не думал(-а) об этом раньше – 7%

3. Что, на ваш взгляд, из нижеперечисленного является экстремизмом?

- А. Подрыв национальной безопасности и обороноспособности – 4%
- Б. Разжигание сословной и социальной розни – 0%
- В. Насильственное изменение конституционного строя – 6%
- Г. Разжигание религиозной розни и вражды – 18%
- Д. Разжигание расовой, национальной и родовой розни – 9%
- Е. Все перечисленное – 53%

4. Можно ли отнести, на ваш взгляд, нижеприведенные случаи к проявлению экстремизма?

А. Публикация в сообществе в Вконтакте, предлагающая проголосовать «за» или «против» отсоединения Восточно-Казахстанской области от Казахстана – 10%

Б. Пост на Фейсбуке, критикующий политику В. Путина в отношении Сирии и Украины – 1%

В. Различные записи и комментарии, свидетельствующие о негативном отношении к представителям какой-то этнической группы – 10%

Г. Надписи оскорбительно-провокационного характера на зданиях, ограждениях и газетных киосках – 4%

Д. Репост на своей странице выдержек из неопубликованной книги, очерняющей казахский народ – 0%

Е. Распространение радикальных религиозных видеороликов в социальных сетях (к примеру, ИГИЛ) – 43%

Ж. Комментарии по земельным протестам и намерение участвовать в митингах – 0%

З. Ничего из выше перечисленного – 9%

И. Все перечисленное – 14%

5. Знаете ли Вы, что за публикацию в сети поста определенного содержания в социальных сетях (Фейсбук, Вконтакте, Одноклассники и пр.) вы можете быть лишены свободы?

- А. Да, знаю – 76%
- Б. Нет, не знаю – 24%

6. Насколько остро проблема экстремизма проявляется в Казахстане?

- А. Проблемы не существует – 7%
- Б. Проявляется, но не в

значительной степени – 64%

В. Проблема крайне актуальна – 29%

7. Беспokoит ли проблема экстремизма лично вас?

- А. Очень беспокоит – 41%
- Б. Совсем не беспокоит – 18%
- В. Не думал (-а) об этом – 41%

8. Заинтересованы ли вы в повышении своей правовой грамотности в вопросах экстремизма?

- А. Да, заинтересован (-а) – 80%
- Б. Нет, не заинтересован (-а) – 13%
- В. Мне все равно – 7%

9. Какой способ получения обучающей информации был бы для вас наиболее удобным?

- А. Видео-ролики – 30%
- Б. Онлайн игры-симуляции – 2%
- В. Передачи на телевидении – 9%
- Г. Радио-программы – 2%
- Д. Кампании в социальных сетях – 23%
- Е. Обучающие тренинги – 26%
- Ж. Не интересно – 8%

10. Должно ли, по вашему мнению, государство участвовать в повышении правовой грамотности населения в вопросах экстремизма?

- А. Да, должно – 66%
- Б. Этими вопросами могут эффективно заниматься местные сообщества, НПО и другие институты гражданского общества – 34%
- В. Не должно – 0%

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