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МАЗМҰНЫ

**Бекен Махмұтов, Зайтунам Ашимова,
Гүлжан Қамырова**
Жаңа мемлекеттік менеджмент үлгісін
зерттеудің теориялық мәселелері 6

Айдана Акесина, Майра Дюсембекова
Өтпелі кезеңдегі дауыс беру: Қазақстандағы
саяси құндылық ретінде сөз бостандығын
дамыту мәнмәтінін түсіну 20

Қуаныш Сайлау, Алуа Жолдыбалина
Онлайн кеңістегі сайлау алдындағы үгіттерді
қаржыландыруды реттеу: халықаралық
тәжірибе және Қазақстандағы сайлау 30

**Айдана Қалдыбекова, Синан Өзбек,
Қарғаш Жанпейсова, Еркеш Қожбанхан**
Пост-шындық, популизм және
жаңа медиа арасындағы байланыс 42

**Қарлығаш Әубәкірова, Бауыржан Ердембеков,
Үшқын Сәйдірахман**
Алаш идеясы және цензура 54

**Бақыт Бюжеева, Әділбек Еркембаев,
Сәуле Туркеева**
Қазақстандық көлік тасымалы жүйесінің
халықаралық көлік тасымалдау жүйелерімен
ықпалдасу мүмкіндіктері мен нәтижелері 66

Сейілбек Мұсатаев
Орталық Азиядағы су ресурстарының тапшылығы
экологиялық көші-қон факторы ретінде 83

**Әділхан Мұхамедияров, Эльдар Бақпаев,
Бағыш Габдулина, Данагүл Кожежанова**
Денсаулық сақтаудағы құқықтық негіздер:
халықаралық заңнамаларға салыстырмалы талдау 102

СОДЕРЖАНИЕ

Бекен Махмұтов, Зайтунам Ашимова, Гүлжан Камырова
Теоретические вопросы исследования
новой модели государственного менеджмента 6

Айдана Акесина, Майра Дюсембекова
Голоса в переходный период: понимание контекста
развития свободы самовыражения как
политической ценности в Казахстане 20

Қуаныш Сайлау, Алуа Жолдыбалина
Регулирование финансирования предвыборных
кампаний в онлайн-пространстве:
международный опыт и выборы в Казахстане 30

**Айдана Қалдыбекова, Синан Өзбек,
Қарғаш Жанпейсова, Еркеш Қожбанхан**
Связь между постправдой,
популизмом и новыми медиа 42

**Қарлығаш Аубакирова, Бауыржан Ердембеков,
Үшқын Сәйдірахман**
Идея Алаш и цензура 54

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Дәуір

ҒЫЛЫМИ-САРАПТАМАЛЫҚ ЖУРНАЛ

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Бакыт Бюжеева, Адильбек Ермакбаев Сауле Туркеева Возможности и результаты интеграции казахстанской транспортной системы с международными транспортными системами	66
--	----

Сейлбек Мусатаев Дефицит водных ресурсов в Центральной Азии как фактор экологической миграции	83
--	----

Мухамедьяров Адильхан, Эльдар Бақпаев, Бағыш Габдулина, Данагуль Кожежанова Правовая база в здравоохранении: сравнительный анализ международных юрисдикций	102
---	-----

CONTENTS

Beken Makhmutov, Zaitunam Ashimova, Gulzhan Kamyrova Theoretical Issues of the Study of a New Model of Public Management	6
---	---

Aidana Akessina, Maira Dyussebekova Voices in Transition: Understanding Freedom of Expression as a Political Value in Contemporary Kazakhstan	20
--	----

Kuanysh Sailau, Alua Zholdybalina Regulation of Financing of Online Election Campaigns: International Practice and Elections in Kazakhstan	30
---	----

Aidana Kaldybekova, Sinan Ozbek, Kargash Zhanpeisova, Yerkesh Kozhbankhan The Link Between Post-Truth, Populism and New Media	42
---	----

Karlygash Aubakirova, Bauyrzhan Yerdembekov, Ushkyn Saidirakhman The Idea of Alash and Censorship	54
---	----

Bakhyt Byuzheeva, Adilbek Yermekbayev Saule Turkeyeva Opportunities and Results of Integration of Kazakhstan's Transport System with International Transport Systems	66
---	----

Seilbek Mussatayev Scarcity of Water Resources in Central Asia as a Factor of Ecological Migration	83
---	----

Adilkhan Mukhamedyarov, Eldar Bakpayev, Bagysh Gabdulina, Danagul Kopezhanova Legal Frameworks in Healthcare: Comparative Insights from International Jurisdictions	102
--	-----

Редакциялық кеңес

- Ерлан ҚАРИН** – редакция алқасының төрағасы, Қазақстан Республикасының Мемлекеттік кеңесшісі, саяси ғылымдарының кандидаты
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VOICES IN TRANSITION: UNDERSTANDING FREEDOM OF EXPRESSION AS A POLITICAL VALUE IN CONTEMPORARY KAZAKHSTAN

Abstract. The purpose of this research is to comprehensively understand the transitional processes in post-communist nations and their influence on the present state of freedom of expression in Kazakhstan.

Freedom of expression is not just a legal right; it is a fundamental political value that serves as the bedrock of any thriving democracy. In the context of Kazakhstan's post-communist journey towards democracy, understanding the nuanced dynamics of development of civil society its freedom of expression is crucial. This article explores how freedom of expression acts as a pivotal political value, shaping the trajectory of Kazakhstan's democratic aspirations.

The study addresses several key questions, including the fundamental value of freedom of expression globally, historical, and political background and current situation with freedom of expression in Kazakhstan. By investigating these elements, the study aims to fill a gap in the current literature and contribute to a better understanding of the context in which freedom of speech has been developing in Kazakhstan.

Key words: *freedom of expression, freedom of speech, human rights, marketplace of ideas, political values, civil society, democratization.*

Айдана Акесина, Майра Дюсембекова

**ӨТПЕЛІ КЕЗЕҢДЕГІ ДАУЫС БЕРУ: ҚАЗАҚСТАНДАҒЫ
САЯСИ ҚҰНДЫЛЫҚ РЕТІНДЕ СӨЗ БОСТАНДЫҒЫН ДАМУ
МӘНМӘТІНІН ТҮСІНУ**

Андатпа. Зерттеудің мақсаты посткоммунистік елдердегі өтпелі процестерді және олардың Қазақстандағы сөз бостандығының қазіргі жағдайына әсері туралы жан-жақты түсінік алу.

Сөз бостандығы тек заңды құқық ғана емес; бұл кез-келген гүлденген демократияның негізі болып табылатын негізгі саяси құндылық. Қазақстанның посткоммунистік дамуы мен демократияландыру тұрғысынан азаматтық қоғамның даму динамикасының нюанстарын түсіну және оның өзін-өзі көрсетуі шешуші мәнге ие. Мақалада сөз бостандығы Қазақстанның демократиялық ұмтылыстарының траекториясын айқындайтын негізгі саяси құндылық ретінде қалай әрекет ететіні зерттеледі.

Зерттеу әлемдегі пікір білдіру еркіндігінің іргелі құндылығын, тарихи және саяси контекстті, сонымен қатар Қазақстандағы пікір білдіру еркіндігінің ағымдағы жағдайын қоса алғанда, бірнеше негізгі мәселелерді қозғайды. Осы элементтерді зерттей отырып, зерттеу қазіргі әдебиеттегі олқылықты толтыруға және Қазақстанда сөз бостандығы дамитын контекстті жақсы түсінуге ықпал етуге арналған.

Түйін сөздер: сөз бостандығы, адам құқықтары, идеялардың "нарығы", саяси құндылықтар, азаматтық қоғам, демократияландыру.

Айдана Акесина, Майра Дюсембекова
ГОЛОСА В ПЕРЕХОДНЫЙ ПЕРИОД: ПОНИМАНИЕ
КОНТЕКСТА РАЗВИТИЯ СВОБОДЫ САМОВЫРАЖЕНИЯ КАК
ПОЛИТИЧЕСКОЙ ЦЕННОСТИ В КАЗАХСТАНЕ

Аннотация. Целью данного исследования является всестороннее понимание переходных процессов в посткоммунистических странах и их влияние на нынешнее состояние свободы самовыражения в Казахстане.

Свобода самовыражения – это не просто законное право; это фундаментальная политическая ценность, которая служит основой любой процветающей демократии. В контексте посткоммунистического развития Казахстана и демократизации понимание нюансов динамики развития гражданского общества и его самовыражения имеет ключевое значение. В данной статье исследуется, как свобода выражения мнения выступает в качестве ключевой политической ценности, определяющей траекторию демократических устремлений Казахстана.

Исследование затрагивает несколько ключевых вопросов, включая фундаментальную ценность свободы выражения мнений в мире, историческую и политический контекст и текущую ситуацию со свободой выражения мнений в Казахстане. Исследуя эти элементы, исследование призвано заполнить пробел в современной литературе и способствовать лучшему пониманию контекста, в котором развивается свобода слова в Казахстане.

Ключевые слова: свобода самовыражения, свобода слова, права человека, «рынок» идей, политические ценности, гражданское общество, демократизация.

Introduction

The importance of free speech in political philosophy has been discussed and debated for a very long time. The right to express one's thoughts, opinions, and beliefs without interference or repression is commonly understood as free speech. Because it enables people to engage in public discourse and to question accepted ideas and beliefs, this right is regarded as being fundamental in democratic societies. The right to free speech is unquestionably a fundamental human right.

Habermas, a media and democracy theorist, emphasizes the importance of the media as a forum for democratic debate and civil dialogue. The media, according to Habermas, play an important role in creating a public sphere in which citizens may engage in open and inclusive discussions about social issues contributing to the continual process of developing a more just and progressive society [1]. However, the idea of free speech extends beyond the act of expressing oneself to include the critical component of participation in open dialogues. The fundamental worth of freedom of expression is found in its potential to allow the search and finding of truth. This can only be accomplished if individuals are permitted to openly express their thoughts while simultaneously subjecting those opinions to critical scrutiny and discussion.

Freedom of speech serves as the foundation of democracy, a system of governance that prioritizes individual liberties and safeguards the rights of all minority groups. It provides individuals with the utmost freedom to express their thoughts, opinions, and ideas, while also serving as a vital protection for diverse viewpoints within society. However, in an increasing number of countries, this fundamental freedom is facing significant threats and challenges, while in other nations, authorities persistently push its boundaries to determine its limits.

Following the dissolution of the Soviet Union in 1991, the post-communist countries including the Central Asian region witnessed the emergence of five independent countries. This transition to independence raised hopes for the establishment of democratic systems and the promotion of civil society, including press freedom, in the region.

Methodology

Literature Review: Conduct a review of existing literature on fundamental approaches to freedom of expression in political philosophy; analyze the impact of communism on the political landscape and free speech in post-communist countries; examine scholarly articles, reports, and legal documents related to freedom of expression in Kazakhstan. This will provide a theoretical foundation and help identify gaps in current knowledge.

By employing these methods this research aims to provide a comprehensive understanding of the nature and value of freedom of expression for democratic society and most importantly the state of freedom of expression in Kazakhstan and its underlying factors.

Traditional concepts of freedom of expression

Freedom of expression, which is a fundamental human right, refers to people's capacity to state their opinions without hindrance from others or government

ensorship. Major democracies acknowledge the significance of the right to freedom of expression in functioning democratically.

The very first legal and political ideas underlying the concept of free speech in contemporary understanding trace to the notion of a ‘marketplace of ideas.’ The traditional marketplace theory emphasizes the harm of any authoritatively imposed truth and assumes that truth is discovered through competition with a false narrative [2]. The idea of a ‘marketplace of ideas’ dates back to the late 19th century and has been widely discussed and analyzed in the literature. ‘Marketplace of ideas’ is the concept that regards ideas and opinions as goods and services in a marketplace where they are freely expressed, discussed, and tested. This theory contends that the discovery of truth will result from the open discussion of divergent viewpoints in a fair marketplace.

Many academics have discussed and examined the marketplace of ideas concept in literature, assessing its value as a framework for comprehending the function of speech and the media in society. Some argue that a democratic society should be modeled after the marketplace of ideas, where everyone’s opinions are valued equally, and the truth will eventually prevail. Others contend that the marketplace of ideas is a flawed theory because it makes the erroneous assumptions that all ideas are equally valid and that there is a competitive market for ideas.

Lucas A. Powe Jr. argues the marketplace of ideas theory in his work *Free Speech Now*. Although the free exchange of ideas is not ideal, according to Powe, it is the finest form of democracy since it recognizes all perspectives equally and allows the truth to emerge over time [3]. The notion holds that all false beliefs will ultimately be disproven, and the truth will triumph. The marketplace of ideas works like a competition in which ideas are questioned, argued, and criticized, with the best ideas rising to the top. This theory holds that a plurality of viewpoints and ideas leads to a richer and more educated society. According to him, despite its drawbacks, the marketplace of ideas remains a key foundation of democracy, allowing people to express themselves without fear of censorship or coercion [4]. This approach comes from the fundamental assumption that all untruthful ideas will be debunked eventually.

Weissberg discusses the positivistic nature of the marketplace and its flaws. The positivistic marketplace, according to him is not a universal method for settling conflicts since there are normative disputes which rarely may be resolved through informed discussion. Differences in values are at the root of many disputes [5]. Furthermore, the statement implies that many disputes in the marketplace of ideas are frequently fueled by differences in value systems. Values are complicated multilayered and subjective concept and can differ greatly between individuals and social groups. Finding consensus through purely objective measures can be difficult when conflicting views arise because of opposing values. This demonstrates the shortcomings of a positivistic approach to resolving disputes in the free market of ideas. Another critique of the marketplace doctrine is underlined by Baker who emphasizes personal experience factors. According to him, diversity and conflict are likely to continue as long as people have different experiences, as there is little guarantee that any society can have a consensus

on what is “true” [6]. In other words, in societies with diverse experiences and viewpoints, there will always be clashes of ideas and conflict since individuals see the world through an array of polarizing filters like upbringing, culture, beliefs, and personal experiences. Therefore, it can be difficult for a society to reach a consensus on what is regarded as ‘true’ or factual.

Cass R. Sunstein presents a more balanced and thoughtful understanding of the marketplace of ideas, recognizing both its advantages and disadvantages. For instance, according to Sunstein, despite having the potential to be a strong positive force, the marketplace of ideas can also be used to legitimize harmful ideas [7]. In other words, open debate does not guarantee the victory of the best ideas and concepts. It may also serve well in protecting dangerous and damaging initiatives and ideologies if presented the right way.

In the process of development of freedom of expression, the legal practice of democratic countries plays an important role. There is a number of fundamentally important legal cases and legislation in the American law practice. The First Amendment of the US Constitution guarantees Freedom of speech for people in the US. Internationally, the First Amendment is regarded as important. First of all, The First Amendment aids in advancing democracy in the United States, a global leader, and a trendsetter country. Second of all, The First Amendment is frequently used as inspiration by other nations attempting to safeguard freedom of speech and expression. Similar clauses have been incorporated into the constitutions of numerous nations, and the US continues to serve as an example for those working to advance free speech. Courts in numerous jurisdictions have emphasized the importance of freedom of expression. However, it was the American Supreme Court which in 1919 ruled out the most prominent legal case establishing the framework of the contemporary freedom of expression concept. The United States *Abraham v United States* US (1919) [8], per Holmes J. is considered one of the most important cases in the theory and practice of the First Amendment to the Constitution of the US.

During World War I, Russian immigrants in the United States disseminated pamphlets calling for a general strike in munitions industries in order to damage the American war effort. The leaflets denounced the sending of American troops to Russia and advocated for the cessation of the production of weapons to be used against "Workers Soviets of Russia". The defendants were convicted for violating the Espionage Act, and the Supreme Court upheld their conviction in the case of *Abrams v. United States*. The Court held that the propaganda posed a danger to the war effort and met the standard for prosecuting attempted crimes established in *Schenck v. United States*. Justice Holmes dissented, arguing that the leaflets did not meet the "clear and present danger" test and that protections on speech should not be curtailed unless there is a present danger of immediate evil or the defendant intends to create such a danger.

Holmes believed that the Constitution supports a "free trade" of ideas, where the best test of truth is through open discussion and debate. He argued that individuals who believe they are right should not impose their beliefs on others through law. Holmes believed that the government should only regulate

expression if it poses an imminent threat to the lawful purpose of the law. Later cases, including *Brandenburg v. Ohio* [9], expanded on Holmes's theory of free speech and established the incitement test, which protects dissent speech advocating unlawful conduct, as long as it does not pose an imminent threat.

Healy outlines the way U.S. Supreme Court Justice Oliver Wendell Holmes transitioned from defending the criminalization of controversial speech to writing a dissenting opinion that was a revolution in thinking and “gave birth to the modern era of the First Amendment, in which the freedom to express oneself is our preeminent constitutional value and a defining national trait” [10].

The 1919 case of *Abraham v. United States* is particularly notable worldwide because it provides a pioneering example of the difficult balance between the right to free expression and the state's interest in safeguarding national security.

Conditions shaping in post-communist countries in Central and Eastern Europe and post-soviet space

The Soviet Union, which collapsed thirty years ago, is still the subject of continuous disputes and arguments over its history. While perspectives regarding the USSR differ, it is universally acknowledged that the Soviet governance system was undoubtedly autocratic. Even after the Soviet Union disintegrated, many governments that formed from its ruins underwent modifications to adapt to changing conditions.

The introduction of liberalization policies in the post-communist space after the dissolution of the Soviet Union set in motion a series of changes aimed at promoting political openness and democratization. However, despite these efforts, the process of democratization has not reached its desired outcome. The reason for this incomplete transition lies in the insufficient strength and consistency of the popular forces necessary to establish a stable democratic order. Without a strong and unified popular movement, old practices that linger from the past have not been fully dismantled.

Government system transitions after Communism

The post-Soviet space is a developing socio-cultural community. Despite their political differences, the post-Soviet space countries all have a shared historical and cultural history as former Soviet republics. This heritage is based on the Soviet-era political, economic, and social structures, which continue to affect the region to this day. Many facets of life in post-Soviet nations, including their political systems, economics, and social and cultural traditions, bear the imprint of Soviet authority.

Throughout the Soviet Union's existence, the Communist Party of the Soviet Union (CPSU) was important in creating the country's political framework. The CPSU wielded enormous authority and control over the nation's political and ideological affairs as the official political party. The influence of the party stretched to the highest levels of state authority, which evolved with time.

Until 1938, the primary governing bodies were the All-Union Congress of Soviets and the Central Executive Committee of the USSR. These institutions were in charge of determining major national decisions and policies. Following that, the Supreme Soviet of the USSR and the Presidium of the Supreme Soviet of the USSR took over as the highest organs of state authority from 1938 until 1988.

These groups were in charge of enacting legislation, monitoring government operations, and expressing the Soviet people's interests.

A substantial shift occurred in the Soviet political landscape during Mikhail Gorbachev's perestroika phase in the 1980s. The new ruling body was the Congress of People's Deputies of the USSR. This institution has a more diversified membership, including non-party members and individuals from several political factions. It seeks to implement political changes and promote a more participative political climate.

Brown underlines, that the introduction of bold democratization measures and a new foreign policy by the Soviet Union in 1988 and their subsequent implementation in the first half of 1989 had unintended consequences in Eastern Europe. Rather than stabilizing the region, these measures actually led to increased unrest and instability. However, they also provided a renewed sense of hope for countries like Poland and Hungary, stimulating national assertiveness and paving the way for the election of candidates with nationalist leanings in certain Soviet republics. Simultaneously, the democratization process had unintended consequences, as it exposed the complexities and fault lines within the Soviet Union itself. The rise of candidates with nationalist leanings in Soviet republics further highlighted the tensions between different national identities and aspirations within the larger Soviet framework.

The Kremlin's decision to dismantle the Communist system in the Soviet Union had a spill-over effect on Eastern Europe. The changes in the Soviet Union influenced the political landscape of Eastern European countries, leading to similar calls for democratization and reform. This circular flow of influence, as aptly described by political scientist Archie Brown, meant that the actions taken by the Soviet Union in promoting democratization had a reciprocal effect on Eastern Europe, ultimately contributing to the breakdown of the USSR itself. While the democratization measures initially generated hope and aspirations for change in Eastern Europe, the unintended consequences of this process resulted in a complex interplay of influences. The nationalist sentiments and assertiveness that emerged in certain Soviet republics added further pressure to the already fragile Soviet Union, ultimately accelerating its disintegration [11].

The transition to democracy in the post-Soviet space faced significant challenges. Explaining the reasons for the failure of the transition to democracy, Nisnevich and Ryabov notice that by the late 1990s, several post-Soviet states experienced a rollback of the market and democratic reforms that had previously been initiated. This reversal can be attributed to two interconnected reasons, according to them. Firstly, they explain that the post-Soviet states faced a profound societal crisis that affected the entire region. Unlike Central and Eastern European countries, where the fall of communist regimes in 1989 was preceded by a "revolution of values" in the mass consciousness, leading them towards the path of democracy, the Soviet Union experienced a different trajectory [12]. Apart from the Baltic Republics, there was no similar widespread rejection of the socialist system at the level of values. Only a small segment of the intellectual elite recognized the historical futility of the socialist system. On the other hand, a significant portion of the population harbored dissatisfaction

with the existing social order for different reasons. The system increasingly failed to meet their consumer needs, exacerbating their discontent. As a result, there was a growing sense of disillusionment and frustration among the population, leading to weakened support for democratic reforms.

Civil society delayed transformation

The communist regime put immense effort to eliminate independent social subjects and to ensure control over the population. This included the suppression of civil society organizations, including trade unions, religious groups, and non-governmental organizations.

Nisnevich and Ryabov also agree that civil society failed to grow and prosper in the Soviet Union due to the nature of the totalitarian government, which rigorously monitored and regulated all elements of public life. The repressive governmentization of society made it difficult for autonomous civic groups and movements to emerge. However, they add that the lack of solidarity-driven civic actions and movements confronting the government demonstrated the absence of civil society. According to scholars, the prevalent paternalistic attitude among broad sectors of the populace was a fundamental contributor to the Soviet Union's lack of civil society. Many people saw the government as the principal supplier and distributor of material riches, and they relied on it to meet their needs. In other words, they suggest that this reliance on the government as the primary supplier weakened citizens' motivation and initiative to actively participate in civic engagement and take responsibility for their own affairs. Furthermore, the paternalistic mentality encouraged obedience and adaption to government measures. People were more likely to accept and adapt to government policies, decisions, and actions than to challenge or question them. Because there was a lack of critical involvement and autonomous civic efforts, this apathy and desire to cooperate with authority undermined the establishment of an independent civil society.

The limited influence of civil society during the communist era and its aftermath has often been identified as a factor constraining its impact on democratization. This viewpoint has traditionally relied on the Tocquevillian notion that a robust civil society contributes to the strength of democracy. Additionally, it has been rooted in a normative perception of civil society as a source of liberal ideas and values, as well as a domain characterized by civility and tolerance [13].

The weak civil society in post-communist countries has significant implications for the democratic transition and consolidation processes. Civil society organizations are essential for providing a voice to diverse societal interests, fostering public debate, and holding governments accountable. Their absence or limited influence can result in a lack of pluralism, and diminished citizen participation.

The relationship between civil society and free speech is fundamentally intertwined, as the flourishing of civil society depends on the presence and protection of freedom of expression. This is what makes civil society an important element and prerequisite for free speech.

Unrestricted media is extremely important in democratic nations since it is a necessary condition for developing democratic dialogue between citizens and

the government. Its role is more than just a component of political democracy; it is essential to the overall functioning of democratic participatory governance. Horowitz states, that communication, in this view, serves as a uniting factor that links and promotes the operation of various key aspects inside modern democracies. Unrestricted media serves as a medium for the open flow of information, ideas, and opinions in democratic countries. It gives a venue for residents to express their opinions, express their concerns, and engage in public debate [14].

The Present State of Freedom of Expression in Kazakhstan

The collapse of the media system in the Soviet Union following the state's dissolution had far-reaching consequences that continue to shape the socio-political landscape of many former Soviet countries. While the formal structures of state-controlled media disintegrated, the legacy of the Soviet era has left a lasting impact on the media landscape in these nations.

The Republic of Kazakhstan's Constitution emphasizes the importance of media freedom and its role in reflecting democratic societal processes. It recognizes the need for media freedom to operate independently and deliver information to the people. However, despite formal legal acknowledgment of freedom of information, there are constraints and obstacles in converting this constitutional principle into practical terms that assure its successful implementation.

According to the Reporters Without Borders (RSF) World Press Freedom Index for 2023, Kazakhstan is ranked 134 out of 180 countries [15]. This ranking indicates that Kazakhstan's press freedom situation is evaluated relatively low compared to other countries worldwide. Similarly, Freedom House's Freedom in the World report for 2022 ranks Kazakhstan at 23 out of 100, which reflects a relatively low score in terms of political rights and civil liberties [16]. These rankings highlight the concerns and challenges related to press freedom in Kazakhstan.

According to Muminova, despite the transition from the Soviet era to the post-Soviet period, certain characteristics persisted in the mass media landscape of many post-communist countries. [17].

Conclusion

The fundamental value of freedom of expression on a global scale is acknowledged as a cornerstone of democracy, prompting an exploration into the extent of its constraints in Kazakhstan. The research identifies and analyzes various factors contributing to these restrictions, emphasizing the role of development of civil society in curtailing freedom of expression.

In conclusion, the current state of freedom of expression in Kazakhstan reflects a complex interplay of historical legacies, legal frameworks, and contemporary challenges. The collapse of the Soviet Union dismantled formal structures of state-controlled media, but the enduring influence of the Soviet era continues to shape the media landscape in Kazakhstan and other post-communist countries.

The analysis not only contributes to bridging gaps in existing literature but also lays the groundwork for understanding the multifaceted barriers to democratic development in the country.

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