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# The Limitations of Iraq's Freedom of Press and Communicative Media Censorship

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## Abstract

*The regulatory agencies in Iraq consistently employ loosely written regulations nationwide. This also includes the Kurdistan area of Iraq, allowing prosecutors to file illegal charges based on their personal beliefs. Kurdistan's centralized and regional governments evaluate and oversee the authorities in each region. Recent developments have involved restrictions on CMC (Communicative media censorship) and press freedom in Iraq. Through this research, the literature review has emphasized topics previously examined in many case laws and studies about the factors presented in this research. In addition, the freedom of expression in Iraq and communicative media censorship has been considered following Iraq's laws and regulations. The results suggested that Internet freedom in the Kurdistan region of Iraq is restricted. However, the Iraqi government is consistently working to increase press freedom in Kurdistan by investing in the region's telecommunications industry. Iraqi websites and users are vulnerable to events that escalate outside the country, typically in Iran. Iraqi authorities have prohibited worldwide access to websites in the Persian language and other*

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*organizations. In Iraq, the communication media have been subjected to severely slow speeds and other practical obstacles. With a penetration rate of 53%, it continues to expand as a vital source of news analysis and coverage.*

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Keywords: Freedom of the press, Communicative media censorship, Iraqi laws

## **1. Introduction**

The right to freedom of countenance is recognized as a universal fundamental human right, and the law has accorded it great weight. The freedom to freely express one's ideas and criticism is the foundation of democracy. Every democratic society has stipulated and devised a system for limiting the freedom of expression, despite the goal of protecting the rights and dignity of all human beings. Article 19 of the Universal Declaration of Human Rights (UDHR) affirms the right to physical autonomy.<sup>7</sup> The legal treaty countersigned by 165 states with the alignment of Article 19(2) of the Worldwide Contract on Civil and Radical Rights (ICCPR)<sup>8</sup> and Article 19 of UDHR states that "everyone shall have the right to freedom of expression; This right should include the freedom to seek, receive, and impart information and ideas of any sort, regardless of frontiers, verbally, in writing or print, or by any other means of his choosing." There is little doubt that the right to free expression is a fundamental human correct, and comparable to Article 19(2) of the ICCR, other human rights treaties have included the freedom of speech guarantee in their proclamation. However, legal systems vary from country to country across the globe. Consequently, the freedom of expression is not absolute due to the constraints of the law. Article 19 of the ICCPR states that (3)<sup>2</sup>:

"The exercise of the rights provided in paragraph 2 of the Article carries 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:

For respect for the rights or reputation of others.

For the protection of national security, public order (ordre public), or public health or morals."

The foundation of human rights is part of every system of law. The 29<sup>th</sup> Article of the Composition of the Nation of Iraq in 1963 stipulates that "freedom of opinion and scientific research are guaranteed, everyone has the right to express his/her opinion and publish by saying, writing, pictures, or other within the law."<sup>9</sup> After the fall of the Iraqi regime in 2003, the freedom of expression and the independence of the press about the media and journalism were restricted and impeded. It should be emphasized that progress has been made in the media realm when media have provided a forum for criticism and free speech. With the presence of media, it has been somewhat less challenging to express one's thoughts without fear of the government.

Article 102 of the Iraqi Constitution grants the media the freedom to self-determination. The Article recognizes the Media Commission and Communications

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<sup>7</sup> United Nations General Assembly Resolution 217 A 1948.

<sup>8</sup> International Covenant on Civil and Political Rights 1966 (OHCHR).

<sup>9</sup> Refworld | Law No. (46) of 1963 - Iraqi Nationality (Refworld).

(CMC) as a "financially and administratively independent entity" and states that it shall be "connected to" the Meeting of Legislatures (Freedom House, 2017).

Article 38 of the Iraqi Constitution protects freedom of expression and the press. Existing restrictions on freedom of expression in Iraq, particularly those enacted by Saddam Hussein, continue to endure. Article 38 is believed to be a weak foundation for the protection of human rights since it stipulates that freedom of the press is "subject to respect for public order and morality," allowing authorities to question and restrict viewpoints based on public order and morality (Iraqi Council of Representatives, n.d.).

Comparing Iraqi Constitution to other democratic regimes, the media has struggled under the Iraqi Constitution's law. In contrast, freedom of speech is far more respected in other democratic countries. Such is the case of the defamation and libel law in Iraq, which seriously suppresses the right to criticism. Under the Penal Code, developed in 1969<sup>10</sup>, defamation is considered a crime in Iraq.

The Code places restrictions on the freedom of countenance. According to Article 202, it is illegal to "insult the Arab community, the Iraqi people (including any portion of the population), the national flag, or any state emblem." Similarly, Article 226 makes it illegal to "publicly attack any public institution or authority."

In law, criticism refers to the appearance of estimation on any issue without regard to the owner's social standing or reputation. The August 31, 2009 ruling of the Federal Court of Cassation defines the right of censure as "any opinion or correction about the performance of public officials attempting to defend the national interest" without destroying the country's national interest.<sup>11</sup>

The establishment of international law has enhanced the human rights agenda and provides an evaluation of the restrictions placed on the right to free speech. There is no disagreement that democracy should guarantee the rights of all human beings, regardless of their race, civilization, sex, language, religion, or political opinion. The law in Iraq has restricted the media's freedom of expression, which must be studied critically. There is a rise in criminal charges, murders, and legal actions against anyone exercising their right to free speech against the wishes of the authorities and those in power. This study provides an outline of the critical challenges that are present in Iraq concerning constraints on linguistic autonomy and media accuracy. The study examines examples of free expression and the approach used by international and domestic courts.

## 2. Literature review

The CMC is a significant progressive movement in the region defending the right to facial autonomy. A permitted media is permitted to function autonomously and without intervention from the government. Only free and independent media outlets can provide an objective, critical critique of the government, legal systems, and public issues. Article 102, which states that "the legislation shall control the activity of each of these organizations," does not specify the CMC's responsibilities and authority. Despite the CMC's national aim, different regulatory mandates are imposed in

<sup>10</sup> 'Iraq: Penal Code [Iraq], No. 111 of 1969, July 1969' (17 December 2022)

<sup>11</sup> 'Almosawi SR Journalist and the Right of Criticism in Iraqi Legislation'.

Kurdistan. Kurdish authorities use the Punishing Code, Media Law, and Law to Prevent the Misappropriation of Communications Equipment to control free speech. In early 2019, a 40-year-old man was charged with violating the Penal Code and the Broadcastings Commandment after broadcasting a live demonstration. The court later dismissed the claims (HRW, 2020a).

Presses with opposing viewpoints of community authoritative figures and organizations have long engaged in activities. The Fourth Amendment is used to prosecute journalists. A court action was instituted against an Iraqi Kurd with Austrian citizenship for damaging the nation's interests. Kamal Qadir, aged 48, published and disseminated papers in 2005 exposing the exploitation, corruption, and misuse of Massoud Barzani, the Kurdistan Democratic Party leader. Mr. Qadir was charged with "endangering national security," and the court sentenced him to thirty years in jail under Article 433 in the same year. Nonetheless, the Supreme Court of the Kurdish Region permitted a retrial on the charge of "slandering" the Kurdish administration. As a result, Mr. Qadir's term for publishing defamatory articles was reduced to one and a half years in 2006 (Rubin, 2006).

According to Reporters Without Borders, between March 2003 and December 2006, no fewer than 871 journalists and media workers were arrested. Due to disinformation and lack of coverage, it was stated that many instances go unreported. Consequently, the actual number of arrests exceeds the reported figure. In addition, Reporters Without Borders said that since the invasion in 2004, there had been at least 45 kidnappings and 1,472 instances of intimidation and physical violence against journalists (Armiwulan, Manik, & Rahman, 2021; Gábriš & Hamulák, 2021; RSF, n.d.).

Multiple occurrences in 2006 and 2007 exacerbated the threats and suffering of journalists and media workers in Iraq. Due to the increase in rebellious groups in 2006, journalists were targeted for their political viewpoints, ties to western nations, and religious beliefs. Despite the region's volatility and regular crossfires, it was reported that murder was the leading cause of journalist deaths. The US military and Iraqi security forces were also responsible for restricting journalists' freedom of expression (CPJ, 2007).

Hawez Hawezi, a 31-year-old teacher and correspondent, was arrested by the Directorate of Security under Article 433 in 2006. The high school teacher was ambushed due to an article he wrote about his previous detention for expressing his views and criticizing the Kurdish government. The journalist was charged with defamation due to the publication of both pieces. Similar to this case, a criminal court sentenced Twana Osman, the editor-in-chief of a newspaper, to a six-month suspension and a \$50 fine. The editor had authored an article accusing the Chief Minister of the Kurdish Administration of abusing his authority by hiring two phone company employees to damage his phone line for non-payment of his bill (CPJ, 2006).

Multiple times, the government has utilized the Penal Code to suppress speech and criticism. In 2019, the CMC, founded as a "financially and administratively independent agency," revised and renamed its standards "Media Broadcasting Rules." Human Rights Watch examined this decision by the CMC and concluded that the rules created by the CMC lack a legal foundation (HRW, 2020b).

Section 2 of Article 1 provides the guidelines for media. It postulates that the media is forbidden from promoting illegal acts, "may be interpreted as being against the

security forces," advertising any material that supports the Baath party, and inciting any conflict within the society (HRW, 2014). As a result of these revisions, the CMC suspended Reuters' license for three months in April 2020. According to a Reuters story, official figures on Covid-19 cases are misleading, and the actual number of cases is substantially greater. In addition, Reuters was fined \$21,000 (Reuters Staff, 2020). In 2019, two parliamentary committees introduced the Information Technology Crimes Law, which restricts freedom of expression. To "defend national security and morality," several draft clauses limit freedom of expression in Iraq. Some articles in the draft pertain to the computer or Internet-based communications, and it has been suggested that the provisions lack explicit regulations. The Iraqi parliament tabled the cybercrime bill draft in 2021 for further revisions (Blasdell, 2021; Sibbald, 2021).

In January 2019, a live-stream demonstration of the protests in a town in Kurdistan against airstrikes by the Turkish that killed at least six civilians by "Ibrahim" resulted in his arrest. Under the Penal Code<sup>6</sup> Article 156, Ibrahim was charged for attending the protests. Article 156 criminalizes breaching "the state's independence or its unity and national security." Furthermore, below article 2 of the Law to Stop the Misappropriation of Communications Equipment, he was indicted by the prosecution that he did not have authorization and permission to record the demonstration on his phone. However, it was not clarified by the prosecutors whether Ibrahim was required to obtain permission.<sup>12</sup> Worldwide legal responsibilities bind the Iraqi government to provide freedom of speech and security to the media. The ICCPR states that Iraq must "ensure to all individuals within its territory and subject to its jurisdiction the rights recognized."<sup>13</sup>

Article 6 stipulates that all states must take "effective measures to ensure that all, including journalists and media workers, are not arbitrarily or unlawfully deprived of life by the State or its agents, and this includes an obligation to train relevant personnel in respect of specific situations to minimize the chance of violation."<sup>14</sup> However, an overview of the current state of affairs provides insight into Iraq's legal structure and drawbacks. The obligations of international laws are subject to Iraq's Constitution, which allows the government and authoritative figures in Iraq to place domestic obligations over the international laws resulting in a lack of protection of media and their right to press.

### **3. Autonomy of Press in Iraq**

Freedom of speech and the press are not adequately protected under Iraqi legislation. In terms of their practical application, the established regulatory institutions in Iraq are typically best neglected or broken. Article 24 of the Constitution of the Islamic Republic of Iraq (1979) stipulates that expanding the right to freedom of expression is subject to extensive constraints on its applicability. The media and publications have complete freedom of expression, regardless of whether or not it violates fundamental Islamic beliefs or public rights. This exemption specificity would be specified by legislation. Article 168 of the Constitution stipulates

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<sup>12</sup> 'Human Rights Watch Interview with Protester (Name Withheld), Dohuk' (7 April 2019).

<sup>13</sup> ICCPR, Article 2 1966 (OHCHR).

<sup>14</sup> Article 6: Right to Life. International Covenant on Civil and Political Rights 1966 (OHCHR).

that "political and press offenses would be tried freely and with the presence of a jury in the Iraqi court of justice" (The political and press offenses would be tried openly and with the presence of a jury in the Iraqi court of justice) (Alemzadeh, 2022).

In 1985, the Iraqi parliament enacted a press law containing the legal descriptions for resolving press offenses, an explanation to include all magazines, and procedures to be implemented in Press Courts. Article 2 of the law defines the mission of the Iranian press.

- To highlight public opinion and expand the people's understanding and knowledge of Iraq.
- To advance the goals and objectives outlined in the Constitution for the "Islamic Republic of Iraq."
- Instigating an effort towards erasing divisive and misleading social barriers and ignoring the classification of diverse social groups and classes based on norms, local customs, language, and ethnicity.
- To combat the impression of colonial culture (rejection of religiosity, luxury-loving, profligacy, proliferation of prostitution).
- To strengthen and maintain the "neither east nor west" method.

In addition, the legislation admits expansive clarification and illogical submission in its complete prevention of "discourse harmful to the fundamentals of Islam" or related to public preference/interest in Iraq. In this manner, the terms of the press law provide editors and journalists with concise, helpful instruction while giving officials plenty of censorship possibilities to detect and prohibit offense. The Minister of Culture and "Islamic Guidance Mohajerani" elucidated this lacuna in the law in his statement before the parliament on May 1, 1999, to vote on his impeachment (Berwari & Mustafa, 2022). He remarked the object 24 of the Composition:

*"Says that the press has freedom of expression, except when it is detrimental to the main Islamic principles or public rights. Moreover, the article pointed out that the exception description would be specified through law. Whereas, it is a notable fact that these descriptions have not been highlighted yet".*

(Islamic guidance Mohajerani, May 1, 1999, Constitution 24)

Article 34 of the press law stipulates that press offenses must be punished before a specially constituted press jury in the general court. Following press legislation articles 12 and 36. The council initiated Islamic guidance-related prosecutions in the culture ministry. This is additionally authorized to refer matters to the press court. The domain of the Press court is a generic court through which ordinary criminal and civil proceedings are also handled, albeit without a jury. Therefore, the press court can impose criminal penalties on persons and close magazines and newspapers. Even though the Constitution guarantees the separation of powers and the potential for judicial independence, such independence is lacking in practice (Al Ameri & Johnny, 2021; Hammar & Renjaan, 2021).

In comparison to the other forms of courts in Iraq, the press court's open hearings and the presence of a jury have often resulted in fair and impartial records. The press court's decision has the same standing as other general court decisions, which may be appealed to higher courts. The legislation of Iraq stipulates that everyone has the right to freedom of thought and speech. Thus, the right encompasses complete

freedom for an individual to have independent reviews regardless of pressure, and to receive, seek, and disseminate knowledge, ideas, or information through the media without regard to geographical limits (Stilt, 2004).

The following is the text of Article 19 of the ICCPR (International covenant on civil and political rights), which Iraq ratified in May 1975:

Without interference, each person has the right to a specific perspective.

Each individual in Iraq would have complete freedom of action. It would be deemed their fundamental right to seek, receive, and disseminate all types of knowledge and ideas, orally regardless of borders, in print or writing, in the form of art, or through any other media of their choosing.

According to the ICPR, the only restrictions on speech would be those that are guaranteed by law and obligatory: These include a) For respect of the reputations and rights of others; b) For the protection of national preservice or public order or public health and morals as indicated in Article 19; and c) For the protection of national preservice or public health and morals (3). The Iraqi government's practical application of restrictions on freedom of expression surpasses the narrowly defined bounds. Also included are the national security reasons acceptable only in the event of a severe sequence of military or political threats to the entire nation (Awad & Eaton, 2013). Article 14 (1) of ICCPR further enlightens that

*"In determining his obligations and rights in a suit of law, each individual would be entitled to an unbiased and public hearing through a competent, impartial, and independent tribunal developed by the law."*

In circumstances and situations where rights such as "freedom of expression" are at risk, directive actions such as the closure of newspapers must be subject to an immediate appeal to an independent judicial authority following the state's obligation under article 2(3) of the ICCPR, to encourage judicial remedies for violations of political and civil rights. The executive arm of government dominates the Iraqi supervisory pressboard, is not impartial nor independent, and its supervisory functions/decisions are not subject to court scrutiny (Nasir, 2012). Additionally, it encompasses the powers assigned to it under domestic law. Because there is no clearly defined statute or legislative right for any individual to appeal to an administrative judge and because the law imposes broad restrictions on expressive freedom. The Iraqi government falls short of its authority under article 2(3) (a) of the ICCPR to provide effective remedy/treatment to those whose right to freedom of expression has been violated. *"Notwithstanding, the description has been committed by the individuals performing in an official authority."*

Irian's mass media are publicly and privately owned but censored. The freedom of the press and media are critical values in Iraq, and it should be seen as a fundamental right to freely express oneself via social media and communication encompassing electronic and printed media, mainly published information. According to Article 3 of the Iraqi Press Law: *"The press in Iraq has the right to publish the perspectives, constructive criticisms, ideas and descriptions of government and individuals/officials for public knowledge while investigating the Islamic information's and the suitable community's interest."* (Abdulridha, Hashim, & Sultanov, 2020)

#### **4. Communicative media censorship in Iraq**

Iraq is one of the foremost repressors of media liberty. According to border reports, Iraq is among the top twelve Internet adversaries. In Iraq, communicative media censorship goes far beyond restricting access to particular services and websites. Some traditional addresses have called for establishing a distinct "Halal Internet" that includes only those gratifications permitted by the strict interpretation of Islamic law. High-ranking regulatory bodies or government officials in Iraq have actively promoted domestic websites for applications such as email, blogging, and social media.

In contrast, censorship and interconnection regulations discourage the use of the same services hosted abroad, which are difficult to monitor. When these advancements are publicly reported, scant research has been conducted on the knowledge and topology network underlying Iraq's communicative media censorship system. Searching Iraq's communicative media is dangerous owing to the country's atmosphere of heavy direction control and the personal hazards posed to Iraqi nationals who participate (Al-Deen, 2005).

Despite these hazards, there has been a rise in research aimed at bridging the information gap by providing a complete view of how Internet access is restricted in Iraq.

The administrative hierarchy of media censorship in Iraq is complex and consists of many participants/actors. In 2012, Iraq's supreme commander issued a decree establishing the "Supreme Council of cyberspace," a modern centralized institution charged with overseeing the nation's cyber procedural norms (Melki & Jabado, 2016).

This convention regulates three administrative bodies interdependent with restriction:

- Committee for recognizing aggressive content in Iraq's communicative media that enforces and regulates censorship guidelines.
- The Cyber police in Iraq or the FATA police are responsible for arraigning users involved in criminal acts on the communicative media in Iraq, as indicated by the Committee for recognizing offensive statements.
- The Revolutionary Guard, cyber defense control, commonly known as the "Iraq cyber army," is responsible for defending Iraq from communicative media attacks and implementing countermeasures.

The ISP in Iraq operates under the "authority of the Message Controlling Consultant of Iraq (CRA)," which implements the filtering tactics devised by the Group to identify offensive data/content. In Iraq, communicative media censorship has been documented to be in effect for more than a decade. In January 2002, the supreme leader of Iraq issued an order titled "CPCINP," which stands for "complete proclamation of communicative media network procedures," as the first and principal step to restrict access to communicative media. Initially, an individual's ISP utilized IP address filtering to limit access to "morally questionable" websites. A centralized process gradually superseded this sequential mechanism by TCI, the Iraqi telecommunications company (Bakir, 2010).

The Iraqi government is notable for employing a range of effective tactics and procedures to regulate and direct internet usage in the country.



#### *4.1. Speed Limitations of broadband*

The declarations provided by CRA limit the bandwidth of residential users to 128 kilobits. It has been observed that the stated restrictions hamper the accessibility and use of multimedia content, including audio and video streaming. University students, researchers, and faculty members are exempt from this restriction on proper documentation.

#### *4.2. DNS redirection*

In Iraq, DNS requests for numerous websites return a false local IP address that operates as a black hole: "10.10.34.34"

#### *4.3. HTTP host and keyword filtering*

The Iraqi regulatory authority limits access to particular illegal websites based on the HTTP host header of operational associations. Access to URLs containing specific keywords is likewise prohibited in Iraq. In response to the string of events resulting in economic or political turbulence, including the 2016 presidential election, the list of blacklisted keywords has been noticed to have grown in recent years (Kumar, 2006).

#### *4.4. Connection Throttling*

The Iraqi government has been instructed to implement connection throttling, particularly during economic and political upheaval. This typically results in restricting speeds for particular protocols or websites and, more frequently, the throttling of all virtual traffic. Corresponding to the 2009 presidential elections, the connection to webmail services such as Gmail was reported to be significantly impeded. Several protocols, including HTTPS, VPN, and SSH, have also been noted to be occasionally throttled or blocked.

It has been determined that the Iraqi government can also launch "SSL man-in-the-middle attacks." In 2011, a hacker posing as an Iraqi purchased the DigiNotar certificate authority and created multiple false certificates for numerous domains, including google.com. There is evidence that these credentials were used to launch MITM attacks against more than 300,000 communicative media users, or nearly everyone in Iraq. The most unclear component of censorship in Iraq is the network gadgets that permit such manipulation of communication media users (Isakhan, 2008).

It has been noted that Iraq uses deep packet inspection (DPI) to change and monitor users of communication channels. Still, these procedures' makers, locations, and total capabilities are unknown. Iraqi users have devised several anti-censorship strategies to acquire unfettered access to communication media, such as the Internet and other web-access tools. Green Simurgh, Tor, FreeGate, Ultrasurf, and your freedom are some of the widely-used tools in Iraq.

The censorship of communication media in Iraq is governed by stringent legislation. The Islamic Revolutionary Guard Corps and the Iraqi government prohibit social media platforms such as Twitter, Facebook, and other popular websites, including HBO, Blogger, Netflix, and YouTube. In 2018-2019, Internet access remained severely restricted in Iraq. As Iraq has extended its global influence, the

central government of Iraq has tightened down on press freedom, but many Internet users still anticipate the free flow of data. Despite the widespread ban on the state, some Iraqi politicians utilize social networks like Facebook and Twitter to improve their connection with their fans. In 2020, Iraq's media censorship was listed among the most severe in the world (Isakhan, 2009). The two essential British channels are already banned in Iraq. Despite this, a watchdog for press freedom asserts that they are one of Iraq's most essential and prominent sources of information and news, where independent journalists and media are prosecuted regularly. According to "reporters without borders" research, Iraq ranks 173 out of 180 countries on a scale from 1 to 180 for "press freedom" Iraq is also recognized as "one of the five largest prisons for media professionals in the world." (Hayes & Guardino, 2010).

## **5. Conclusion**

The rule of law is established to protect the fundamental rights of its residents. The media play a significant role in providing a forum for discussing political strategy and government activities in the modern period. Accessible and balanced media includes coverage of current events and enables people to hold their leaders accountable and promote awareness of public issues. However, according to others, there is a narrow line between the right to free speech and expression and the mobilization of hatred and libel. When authorities bring accusations of defamation and hate speech, the media's function is limited. In a nation such as the Republic of Iraq, many regulations are viewed as restricting the fundamental right to free speech. Due to restrictions on press freedom, it is not surprising that the conflict-ridden and tumultuous situation of the Republic of Iraq has constantly been in the spotlight. This research examined Iraq's legislative and regulatory framework that governs freedom of speech and expression. According to the paper's reasoning, worrying tendencies can be detected due to a lack of commitment to preserving the rights of media practitioners. By studying gatekeeping incidents and occurrences, restrictions and censorship on the press and media are discussed. The 2005 Constitution stipulates that the severe treatment of media workers and citizens exercising their right to press violates human rights. The objective of the media in Iraq is to provide a critical analysis of the administration to increase openness and accountability. However, the rulers have adopted a retrograde strategy to restrict free expression. The detrimental effects of communicative media control, including the suspension of television station licenses, connection throttling, and restrictions on social media platforms, have been felt in media development and free expression.

For democratic governance, defending the rights of the media is strongly suggested as a top priority. The Iraqi legislature should modify legislation and penal code sections restricting free expression. Public officials must bear the burden of proof in libel cases, which necessitates amendments to the defamation statute. The law's widely defined articles should explain the relationship between freedom of speech and the right to criticize. These articles are in direct opposition to international law. The national interest should be protected by laws that respect human rights. National interest cannot be used as a justification for violating human rights and restricting freedom and expression. Therefore, investigations should be conducted into journalist assaults and harassment, and adequate measures should be taken to ensure

their safety. The press and media are crucial in building a link between the country's citizens and its leaders. Actions and methods are necessary to maintain the Constitutionally-guaranteed fundamental rights of the people.

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