THE PUBLIC AD HOC REPORT OF THE HUMAN RIGHTS DEFENDER

ON

THE RIGHT TO FREEDOM OF SPEECH IN THE REPUBLIC OF ARMENIA

YEREVAN 2010

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INTRODUCTION

The protection of human, including civil rights is the key objective of all societies and the main direction of public affairs in all states. Human rights are many and diverse, and the rights to freedom of opinion, freedom of expression, as well as freedom to seek and receive information (right to freedom of speech) are of utmost importance among them. Very often the level of freedom of speech in a society determines the level of protection and observance of the remainder of fundamental human rights. Therefore, the exceptional role and importance of freedom of speech in building democratic institutions and achieving social and public advancement in a country is beyond doubt. This role of freedom of speech is twice as important in the Republic of Armenia inasmuch as the country, having found itself under the long-term Soviet regime of limited freedom of speech, has not fully perceived the powerful potential of this right and the destructive consequences of its restrictions.

The study of freedom of speech in the Republic of Armenia is of utmost importance not only to uncover the state of this freedom in the country but also to form an understanding of the democratic developments in general and draw the necessary conclusions from them. The characteristic feature of the right to freedom of speech is that any violation thereof is obvious to the wide circles of non-governmental and international organizations, and the regular statements on the low level of freedom of speech in the reports of international missions in the Republic of Armenia undermines the international reputation of the country entailing a gamut of negative consequences.

A study on freedom of speech has become a pressing need at this stage in view of the noisy cases in this area, the analysis of which is necessary if the aim is to elucidate the current situation to the public and identify the way out of it. Of particular

importance are the several well-managed attempts at depriving television companies providing impartial information of the air.

This report offers a comprehensive study of freedom of speech. It contains a review of the legal acts regulating relations in the area of freedom of speech with a focus on the contradictions and shortcomings of the legislation as well as the provisions exacerbating the freedom of speech situation. The report also addresses journalists' rights and contains concrete examples of the analysis of the nature and content of their violations, as well as the causes of such violations. It also offers a special analysis of the mass media in the Republic of Armenia with a particular focus on the problems in the area of television, radio and press, cases of violations of freedom of speech, their solutions, etc. The report would have been remiss had it excluded a comparative analysis of the international legal acts, the relevant case law and the actual freedom of speech situation in the Republic of Armenia.

Based on the analysis contained in the report, a number of substantiated recommendations are made whose consistent implementation will greatly contribute to improving the general freedom of speech situation in the country.

1. RA Legislation in the Area of Freedom of Speech

Legal acts guaranteeing freedom of speech and related rights are of considerable number within the RA legislation. The history of legislation in this area starts from the first years of independence. Both the right to freedom of speech and legislation in this area are the products of the RA independence.

At present, freedom of speech, as well as rights and relations in this sphere are regulated by the following legal acts of the Republic of Armenia:

- Constitution of the Republic of Armenia (Articles 27, 43, 83.2);

- RA Law on Television and Radio (adopted on 9 October 2000);
- RA Law on the Rules of Procedure of the National Television and Radio Commission (adopted on 28 December 2001);
- RA Law on Mass Communication (adopted on 13 December 2003);
- RA Law on Freedom of Information (adopted on 23 September 2003);
- RA Code of Administrative Violations (adopted on 5 December 1985);
- RA Civil Code (adopted on 5 May 1998);
- RA Criminal Code (adopted on 18 April 2003);
- Procedure for Accreditation of Journalists in the National Assembly of the Republic of Armenia (adopted on 21 August 2009);
- Model Procedure for Accreditation of Journalists in Public Administration Bodies of the Republic of Armenia (adopted on 4 March 2004).

1.1. The RA Constitution

The RA Constitution is undoubtedly the most important among the above legal acts inasmuch as its norms are of direct effect, have the highest legal force and are a point of departure for the entire legislation in this area. The relevant constitutional norms essentially predetermine and outline the boundaries, the content, the grounds for restriction and the guarantees of the right to freedom of speech.

Included among the general constitutional guarantees of freedom of speech may be the rule of law, democracy, separation of powers, independence of the judiciary and a number of other constitutional principles.

Freedom of opinion and speech proclaimed by the Constitution is guaranteed by the freedom of mass communication and the prohibition of censorship.

The text of constitutional amendments of 2005 does not contain an explicit prohibition of censorship despite numerous appeals of specialist non-governmental organizations and the fact that the constitutions of a number of countries do contain direct bans on censorship.

The constitutional regulation underwent certain changes following the 2005 amendments of the Constitution. Prior to these constitutional amendments, relations in the area of freedom of speech had been regulated by Article 24. In the amendments of 2005 they were placed under Article 27, the 1st and 2nd paragraphs of which underwent purely editorial changes. However 2 new paragraphs – 3rd and 4th – were added regarding the freedom of the mass and other communication media, as well as the state guarantee of the existence and functioning of an independent public radio and television offering a variety of educational, cultural and entertainment programmes. These constitutional innovations should be regarded as a positive and progressive step forward.

The constitutionally proclaimed right to freely express one's opinion (the right to freedom of speech) is of fundamental importance for the progressive and predictable development of the society, democracy, various sectors of economy and the state in general.

Article 27 of the Constitution proclaims rights and freedoms, which are interdependent and indivisible and which are directed at developing equal opportunities for everyone to enable self-expression and communication based on the competition of ideas and opinions. All of the *freedoms* listed in this article – *speech, advocacy, notification, opinion, convictions, information, mass*

communication – are equally important and may not be used without paying regard to the systemic links between them.

Article 27 guarantees freedom of speech and opinion, which the Constitution regards as a single and inviolable right to freely express one's ideas by means of speech.

The key purpose of this constitutional article is, first and foremost, to protect public and political opinion, speech, information and ideas, although the freedoms indicated in this article also indirectly protect religious, scientific and artistic thought, as well as commercial information, including advertising and intellectual property rights.

The article specifically defines "the freedom to seek, receive and impart information and ideas by any means of information and regardless of state frontiers.'

Of importance among the norms regulating the relations in the area of the right in question following the constitutional amendments of 2005 is Article 83.2, according to which:

> To ensure the goals of freedom, independence and plurality of the broadcasting media, an independent regulatory body shall be established by the law, half of whose members shall be elected by the National Assembly for a six-year term while the other half shall be appointed by the President of the Republic for a six-year term. The National Assembly shall elect the members of this body by a majority of its votes.

In the course of discussions of the constitutional amendments the journalistic community recommended, in particular, that the Constitution set a similar procedure for the formation of the Public Television and Radio Council. However, these recommendations did not find their way into the constitutional text either. In this context, the other group of recommendations implied more profound changes, in particular, concerning the guaranteed representation of the journalistic community in the commission, which again was rejected in the final outcome.

The above constitutional amendments are well within the logic of transition from a monocentric system to a balanced political system, which, however, was far from being complete (see more about this below). The current Law on Television and Radio envisages two bodies – the Public Television and Radio Council (PTRC) and the National Television and Radio Commission (NTRC). Prior to the constitutional amendments the members of both of these bodies had been appointed by the RA President and, consequently, the influence of the authorities on these bodies was great.

The wording of the article in question is, perhaps, necessary but insufficient for the solution of the problems in this area. The positive effect of the amendments may vanish when both the RA President and the power enjoying the majority in the National Assembly represent the same political force. In this case, there will be no substantive change in the essence of the matter.

At the level of the Constitution the volume and contents of the provisions on these rights are in compliance with the international developments in this area, the international obligations assumed by Armenia and the content of the provisions on this right in international instruments. However, there are certain problems conditioned by the grounds for constitutional restrictions of this right.

As a result of the constitutional amendments the laying down of the freedom and plurality of the mass and other communication media is the precondition of democracy inasmuch as they are of vital importance to a state in terms of creating and developing a democratic culture. Free and independent communication media are an indicator of the democratic maturity of the society.

If the volume, form and content of the constitutional provisions on this right do not raise problems, then the same does not hold true for the constitutional grounds of their restrictions.

Article 43 of the Constitution, along with other rights, also sets grounds for restrictions of the right to freedom of speech and freedom of information. This right too may be restricted only by law provided this is necessary in a democratic society in the interests of national security, public order, prevention of crime, public health and morals, the protection of the constitutional rights and freedoms of others, honour and reputation.

Unlimited freedom may lead to conflicts with public interests and the rights of others. In order to prevent such potential conflicts and harmonize various interests and rights, the state is entitled to restrict certain fundamental rights. The state interferes by means of restrictions on fundamental rights. These restrictions cannot, however, be unlimited inasmuch as in this case a fundamental right would simply vanish. This is the reason why modern constitutional law sets stringent requirements for restrictions on fundamental rights:

a) Not all rights but only a certain group of them may be restricted;
b) These rights may be restricted only by law;
c) The fundamental rights that may be restricted must have constitutionally defined grounds;
d) Even in case of constitutionally defined grounds fundamental rights may not be restricted altogether. Normally, the Constitution sets certain general requirements to the restricting law, which are often called "restrictions on restrictions.' By this the Constitution restricts the legislature's restrictions on fundamental rights. The reference here is mainly to the principles of proportionality and the inviolability of the essence of rights.

In this regard, it should be noted that often certain grounds listed in Article 43 are simply non-applicable to the ban on forcing any person to deny his/her opinion or change it. In case of

literal interpretation of Article 43, there may appear a constitutional ground for forcing someone to change his/her opinion, say in the interests of public order, public health and morals or the honour and reputation of others when in practice doing this is simply impossible. Despite the fact that the technique applied in Article 43 – defining unified grounds for restrictions on all fundamental rights that are subject to restrictions – is utilized in the constitutions of certain countries (Poland, the majority of CIS countries, etc.), it would be more correct if grounds for restrictions on each fundamental right are defined separately. The constitutions of countries, such as Germany, Italy, Spain, Portugal, Estonia, etc. have followed the latter way. Envisaging grounds for restrictions on each right in the same article would allow curbing the discretion of the legislative branch and potential arbitrariness. Since the issue of restricting human and civil rights and freedoms is one of the essential questions of constitutional regulation, it has to be defined as clearly as possible.

The Constitution lays down one of the constituents of the principle of proportionality, i.e. necessity, whereas the other constituents of this principle, in particular, moderation are equally important.

The Constitution failed to incorporate another important requirement to human rights restrictions – the principle of inviolability of the right. An essential element of all rights is the fact that they may resist those actions of the state that interfere with the legal sphere of the human being. Depending on the good protected by fundamental rights and the permissibility of their restrictions, protection of a fundamental right is guaranteed by various criteria. The difference of this principle from the principle of proportionality (or prohibition of excessive action) lies in the fact that the latter applies only to a distinct legislative measure inasmuch as appropriateness, necessity and moderation can be tested only if there exists a concrete legislative goal. However, if

varied legislative interference is made with a legal good, then it is possible that although each measure taken separately is not excessive, their sum total may render the fundamental right as a right protecting the human being unusable. The principle of inviolability of rights is a means to make sure that in individual cases the fundamental rights do not lose their actual force and become empty as a result of proportionate legislative interference.

1.2. The RA Law on Television and Radio

On 10 June, the National Assembly adopted the new text of the RA Law on Television and Radio, which became effective on 28 June 2010.

The Law defines the status of television-radio companies (television companies and radio companies), regulates their founding, licencing and management procedures, the grounds for their rights and duties, as well as the relations arising at the time of their creation and functioning. Before we pass to the analysis of the main amendments to the Law, it is important to address the issues related to some of the provisions of its former text, which, essentially, have been preserved also in the new one. The reference here is made to the inaccuracies, ambiguities or imperfect mechanisms of the relevant provisions.

In particular, the previous text of Article 17 of the RA Law on Television and Radio (LA-97, dated 9 October 2000) read:

'The following parties may not be founders of private television-radio companies:

a) bodies of public administration and local self-government,
b) members of the Public Television and Radio Council;
c) members of the National Commission;
d) political parties;

e) (paragraph 'e' of Article 17 lost its force by the Law LA-69-N dated 3 December 2003);
f) persons who have been declared incapacitated or sentenced to imprisonment by a court decision or persons serving their punishment;
g) citizens below 18.'

Although the above ban has been preserved in the newly adopted Law, in practice the cases when certain television companies are associated with various political parties are not few. From a legal point of view, perhaps these two structures have nothing in common. However, in actual fact and in public perception this or that television company becomes associated with this or that political party's platform.

Article 18 of the current RA Law on Television and Radio lays down provisions directed at ensuring antitrust guarantees. However, in view of the fact that in both the former law and the new one the NTRC is not legally competent to examine the ownership structure of licence applicants, there is no possibility to actually oversee the observance of this norm.

The most vulnerable provisions of the Law that lead to problems in the regulation of this sphere are related to the procedure, terms and requirements of licencing of television companies. However, they also existed in the previous legal regulation. Although the Law has regulated these relations, in practice they open scope for subjectivity and diverse interpretations.

Included among such provisions and concepts may be the following provisions of Articles 49-51 of the Law:

the business programme of a television and (or) radio company and the extent to which it is grounded;

the extent to which the applicant is capable of stimulating plurality;

financial circumstances;

the extent to which the information provided in the application conforms to the reality;

if the technical capacity for broadcasting television and radio programmes is lacking or if the declared technical capacity is not adequate;

if the sources of funding are not substantiated by appropriate documentation.

There is a need for such amendments to the Law on Television and Radio, which will:

1. clarify the procedures for licencing tenders;
2. envisage selection criteria that will accommodate the interests of pluralism, will render the process of licencing more transparent by using more quantitative benchmarks that will, consequently, eliminate or reduce to a minimum the subjectivity of evaluation and allow for public oversight;
3. envisage clear provisions on the share in the market;
4. grant the NTRC competence to check the organizations to prevent the monopolization of the broadcasting market;
5. grant the NTRC competence to check the relationship between a television company and the political party to prevent political parties from owning television companies.

The 2005 constitutional amendments introduced changes into the mechanism of selection of members of bodies regulating private and public mass media. Article 83.2 entailed amendments to the Law on Television and Radio, according to which half of the members must be elected by the National Assembly while the other half – appointed by the RA President.

The amendments to the RA Law on Television and Radio necessitated by the Constitution were made only on 26 February 2007. These amendments introduced the following provision in

the Law: "The National Commission is an independent body, half of whose members are elected by the National Assembly for a six-year term while the other half are appointed by the President of the Republic for a six-year term, except for the first composition'. On 24 April 2008, this provision was again amended as a result of which it was reworded as follows: "The National Commission is an independent regulatory state body half of whose members are elected by the National Assembly of the Republic of Armenia on a competitive basis for a six-year term while the other six are appointed by the President of the Republic for a six-year term, except for the first composition. The terms of appointment of the first composition are laid down in the transitional provisions of this law.

If there is a vacancy for the position of a member of the National Commission, the respective appointment or election takes place in conformity with Article 83.2 of the Constitution of the Republic of Armenia by ensuring the election of half of the members of the National Commission by the National Assembly of the Republic of Armenia and the appointment of the other half by the President of the Republic.'

The newly amended Law has preserved the provisions relating to the formation of the National Commission. These amendments essentially failed to solve the existing problem. On 9 December of last year the election of the members of the National Television and Radio Commission was organized in the National Assembly. 8 persons applied for 4 positions within the Commission. Of interest was the fact that no prominent people and professionals applied for membership in the Commission. The non-governmental organizations operating in the sphere were also passive. This may be accounted for by public mistrust regarding the possibility of engaging in independent professional activity in the NTRC, as well as by the fact that many representatives of these non-governmental organizations were

against the procedure of selection of the NTRC members by the NA whereby the political majority becomes entitled to select the candidate they wish. In other words, the public impact on the election was insignificant (the procedure stipulates supply of a recommendation by the NGOs operating in the field). This became evident also during the election held in December. Out of 7 members recommended by the tender commission the political majority chose those 4 about who the press had written long before. Furthermore, those who represented the mass media were the non-elected 3, whereas 1 of the "elected' members explicitly announced in his speech at the NA that he had no idea about the field but once elected, will study it.

It should be noted that the relevant constitutional amendments were necessary but not sufficient to solve the existing problems. Therefore, if not further constitutional amendments, at least legislative amendments are necessary to form a commission that will reflect the country's political and public pluralism and will ensure the participation of NGOs and professional associations in the NTRC.

The draft of the Law on Television and Radio adopted by the NA on 10 June had for a long time been not only in the focus of Armenian political and public debates but also that of international organizations'.

On 10 June, the EU Delegation welcomed some of the positive changes in the Law on Television and Radio on behalf of the diplomatic missions of EU member states in Armenia, maintaining that they comply with the recommendations tabled by civil society and the OSCE Representative on Freedom of the Media. However, the media themselves had criticized the amendments followed by criticism from the OSCE Representative on Freedom of the Media, the Human Rights Watch and the US Ambassador in the OSCE.

On 15 June, the Human Rights Watch, a New York based human rights defender organization, announced that the Law on Television and Radio would have a negative impact on media pluralism and freedom of information in Armenia. In particular, Holy Cartner, the Executive Director of HRW's Europe and Central Asia Division noted that her primary concern was that the amendments would reduce the number of television stations from 22 to 18 and that the reductions might particularly disadvantage new television broadcasters, especially as the amendments indicated that preference in licencing competitions should be given to existing broadcasters or those with at least three years' experience.

The OSCE Representative on Freedom of the Media, Dunja Mijatovic, issued a statement which noted that the amendments failed to promote broadcast pluralism and ignored the recommendations that were of crucial importance for a smooth transition to digital broadcasting. In her listing of the shortcomings of the Law, Mijatovic included the limit to the number of broadcast channels, the lack of clear rules for licencing of satellite, mobile telephone and online broadcasting, the placement of all forms of broadcasting under a regime of licencing by the NTRC; the granting of authority to the courts to terminate broadcast licences based on provisions in the law that contain undue limitations on freedom of the media, etc. The OSCE Representative on Freedom of the Media also noted: "New technologies, including digital broadcasting, should be used by governments to strengthen media pluralism.'

In his review, the OSCE expert Andrei Richter notes: "We know of no country in the modern democratic world where such offence as defamation leads to a forced closure of a broadcaster on the initiative of an administrative body.' The same holds true for violations of such rights of others, as are respect for privacy or copyright. These are weak grounds for terminating a broadcasting

licence. The provision, which allows terminating a broadcasting licence for "criminally punishable acts or spreading calls for acts proscribed by law' are extremely broad, making calls for any offence like illegal parking equal to a capital crime for broadcasters. As regards the new wording of the Law, according to which "[t]he decision of the National Commission shall be properly justified and reasoned,' the OSCE expert notes, "We believe that this means that the National Commission shall properly justify and provide reasons for its decisions on both selecting a licencee, and refusing a licence. If so, this is a welcome change and will conform to the position of the European Court of Human Rights in a licencing-related case against Armenia.' However, this is not the case and the decisions on refusing a licence are not going to be justified.

The OSCE expert also noted that some of his original recommendations had been totally ignored and related to "future law' or "future amendments.' Included among these were:

- Provide clear distinctions of regulating satellite, mobile, Internet-provided broadcasting and non-linear audiovisual media services.
- Lay legal grounds for the establishment of non-state operators of digital broadcasting.
- Be specific in relation to the number or thematic directions of radio programmes on national and capital multiplexes.
- Change the system of financing Public Television and Radio and that of the National Commission on Television and Radio for an automatic guarantee of their financial independence from the state.
- Reform the system of selecting and appointing members of the Council for Public Television and Radio to provide for a possibility of a pluralistic public broadcasting.

Andrei Richter also stressed that his recommendations were of a systemic nature and urged the authorities to deal with all of them together: "For example, there is no point in putting the public broadcaster under the sole authority of the Council (as was done according to our previous recommendation) unless the Council itself is reformed in a democratic way. Therefore we urge the authorities to deal with all these issues together and if delay in reforming the Law is unavoidable adopt a policy paper that will envision such changes in concrete and near future.' His final recommendation was to adopt a policy paper that will envision a timetable for other changes in the broadcasting law in concrete and near future and to convene a working group consisting of representatives of journalistic non-governmental organizations, parliamentarians and other stakeholders to work on a fundamental revision of the Law.

The Yerevan Press Club, the Committee to Protect Freedom of Speech, Internews Media Support, *Asparez* Journalists' Club and the Open Society Institute issued a joint statement on the amendments to the Law. These organizations, in particular, noted:

- The draft does not clearly define and distinguish the status of digital broadcasters and broadcasting transmitters, the mechanisms for regulating their activities and the relations between these entities. Particularly, it is known that digitalization involves new role-players such as a network operator, multiplex operators and TV companies – the content providers. Moreover, the functions of the first two can be carried out by a single entity.
- Besides, the draft authors have not defined the notion of "network operator" except for the state network operator and the draft does not provide for a regulatory body for supervising the activities of these operators in future.

- According to Part 1 of Article 7 of the draft law, "in the Republic of Armenia broadcasting of TV and radio programs is conducted based on licensing.' Thus, it is not clear to which of the abovementioned digital broadcasters this provision applies (this issue will become more topical after complete digitalization). Part 1 of Article 3 of the draft stipulates "Television and radio broadcasting – dissemination of pictures and (or) sounds or their conditional signs with the help of electromagnetic waves, through transmitting lines (including cable connection) or without transmitting lines (…)'. Digital broadcasting presumes that the abovementioned function is to be carried out not by TV or radio companies, i.e. the content providers, but by the multiplexers.
- In this regard, neither the draft nor the Concept Paper on Digitalization of Television Broadcasting provides for a clear definition and distinction of the activities of digital broadcasting role-players, moreover they lay ground for confusion. At the same time, the draft does not outline the principles for licensing multiplexers, network operators, TV and radio companies.
- According to Article 47 of the draft law, 18 TV companies will be broadcasting through the digital network on the territory of the RA. It is not clear how this limitation on the number of TV companies is justified and substantiated. The determination of a specific number can only be justified by the results of an audit of TV frequencies. Several international experts have also noted the need for conducting an objective and transparent audit. According to representatives of the RA Ministry of Economy, such an audit has been implemented in the RA. Nonetheless,

the results of the audit have not been publicized till now, and the reason behind this remains unclear.

- Recommendation Rec(2003)9 by the CoE Committee of Ministers is noteworthy. It states that the switch over to digital broadcasting should not be used for diminishing pluralism.
- Despite the fact that the Concept Paper on Digitalization of Television Broadcasting provides for several standards of digital broadcast signals, it is not clear what specific standard(s) will be used in the RA. Therefore, the selection of this/these standard(s) must be clarified and duly justified.
- The draft fails to clearly define the scope of those parties that can broadcast via satellite. The study of the draft shows that according to Article 3 of the draft, a television and radio company is a legal entity that transmits or re-transmits TV and radio programs and is responsible for the implementation of this law and other legal regulations. The same draft, as well as the legislation in force stipulate that transmission and retransmission can be carried out only with possession of a license. Article 23 of the document therefore implies that satellite broadcasting can be implemented only by licensed TV companies, which is nothing else but a constraint on the freedom of expression. International practice shows that satellite broadcasting can be implemented by any private company through a simplified licensing procedure.
- The draft law removes the obligation imposed on the National Commission on Television and Radio (NCTR), which is prescribed by Article 48 of the current RA Law "On Television and Radio". According to this Article "(…) The National Commission on

Television and Radio at least once a year shall publicize the frequency list (…)". This provision should be reinstalled in the draft, as its absence blurs facts about the licensing procedures, the exact number of multiplexers and the broadcast network capacity, while their publication is subject to different interpretations and bureaucratic discretion.

- The transitional provision of the draft law stipulates that "the licensing procedure and terms (implemented by the National Commission on Television and Radio) for creating a private digital broadcast network by legal entities ***may*** be set forth from January 1, 2015". This formulation is unjustified, as the broadcast licensing competitions should not depend on the discretion of the NCTR, but imposed on the regulatory body as an obligation. Therefore, we recommend prescribing in the draft that in cases when licensing bids are present for free frequencies, a competition should be held.
- Both the draft law and the Concept Paper on Digitalization of Television Broadcasting, adopted on November 12, 2009, do not include the principles for the envisaged social package. Particularly it is not clear if the 18 TV companies included in the digital broadcasting network are part of that social package or whether they will be after 2015. If not, then how will the package be formed after 2015? In our perception, a new social package should be developed after 2015. The procedure of forming such a package should be determined by the draft or other official documents (for example, Government decree, concept, etc.).
- It is not clear how the results of the research, administered by "*Telemediacontrol*" *CJSC* and presented by the RA Ministry of Economy, can be

related to the profiles for TV companies, as defined by the draft. The definition of such profiles should be preceded by more thorough studies, which are not shown by the draft authors. Therefore, the related provisions of the draft law cannot be considered justified.

- The draft law does not show clearly if it is called to regulate procedures dealing only with digitalization, or to improve the whole Broadcast Law. In case of the first, it is not clear how digitalization is in any way related to the revision of limitations for commercial advertising by TV and radio companies. In case of the second, we do not understand why the draft law does not touch upon more crucial issues, such as increasing the independence of the NCTR and the Council of the Public TV and Radio Company.
- The broadcast digitalization constitutes some danger for pluralism. Therefore, it presumes a simultaneous enhancement of the role of the regulatory body and the guarantees of its independence. The draft law does not define additional mechanisms for ensuring the independence of the NCTR. According to the current procedure, half of the NCTR members are appointed by the RA President, while the other half are elected by parliamentary majority. This cannot ensure the social diversity of the NCTR structure. The need for this was recalled in a number of international documents regarding Armenia, including PACE Resolutions 1532(2007), 1609(2008), 1620(2008), 1643(2008), 1677(2009).
- The RA authorities were supposed to take measures for restoring the violated right to freely impart information and ideas of the “A1+” TV company founder, “Meltex”

LLC, based on the ruling of the European Court of Human Rights on June 17, 2008. To this very day no steps have been taken, and this draft law once again fails to provide for such provisions. On the contrary, by prescribing a limited number of broadcast licenses, the draft law reduces the possibility of "A1+" to obtain a broadcast license.

1.3. Legislative Regulation of the Activities of the RA Public Television Company

In 2001, the National Television and National Radio of Armenia was reorganized into the Public Television and Radio Company of Armenia. It was the first public broadcaster in the CIS territory funded by the State and income generated from advertisements. Following its reorganization, ՀՀ is still the television station with the largest broadcasting domain. In view of its significant impact on public opinion, it is problematic that all 5 members of its Council are appointed by the President of the Republic.

The 2005 constitutional amendments were also an attempt to change the procedure for the formation of the Council. As has already been mentioned, journalistic NGos recommended that the procedure for its formation should be changed to eliminate the relevant monopoly of the President of the Republic. The substance of the amendments revolved around the composition of the Council of the Public Television and Radio Company with a view to establishing a balanced Council.

Following the presidential elections of 2008 there were certain positive improvements in the air of the Public Television Company. However, the fact that the Council of the Public Television Company is still appointed by the President of the Republic remains one of the causes of lack of impartiality and pluralism in the information provided by the public broadcaster,

which is a fact proved by a recent civil society monitoring initiative.

The RA legislation does not contain a requirement for the Public Television and Radio Company to conduct regular self-monitoring which could, in particular, focus on the accessibility of the air to various political parties, the coverage of their activities and limitations on advertising.

The Council has to symbolize and ensure independence from political forces. A Council appointed by the President may lead to interference by the authorities with its work.

It follows from the new function of the independent Public Television and Radio Council that the members of the Council must not be elected by one political force or exclusively by political forces.

The criteria for the election of the public broadcaster's council have to ensure a high level of transparency and professionalism, as well as pluralism of views.

In order to perform tasks of the public broadcaster proper, the Council should conduct a continuous monitoring of accessibility of the air to different political parties and of coverage of their activities, the results of which should be publicized. We believe that there are no constitutional obstacles related to the procedure for the formation of the Council to enable the participation of journalistic NGOs and creative unions. In particular, by leaving the final appointment to the President of the Republic, it may be laid down that the President appoints members from among the candidates proposed by journalistic NGOs and creative unions.

The Law of 28 April 2009 made certain amendments to the procedure for the formation of the PTRC, according to which the President of the Republic appoints the members of the Council by a tender. There is a requirement that at least one of the members must be a woman. However, in order to ensure pluralism indeed,

it is necessary to set a qualification ensuring the pluralism of public participation.

Mistrust towards the activities of the PTRC is also testified by the fact that as early as 3 February 2005, several NGOs issued a statement expressing their dissatisfaction with the RA Law on Television and Radio. They noted, in particular, that the procedure for the formation of the commission does not allow having a truly public and independent commission, and that the formation of the commission by a tender was merely an imitation (see more on this below).

1.4. The RA Law on Mass Communication

The Law on Mass Communication is one of the fundamental legal acts regulating the field. It was adopted on 13 December 2003. It regulates the relations in the area of mass communication, defines the freedom of speech guarantees in the field of communication, lays down the main provisions on accreditation of journalists, refutation of disseminated information and the right of reply, as well as the grounds which exempt the agents of mass communication from liability.

All legal regulation in the area of mass communication may be divided into three groups: defining the concept of the mass communication media, the guarantees of freedom of the mass communication media and the restrictions on the activities of the mass media.

1.4.1. Definition of the Concept of the Mass Communication Media

The Law defines concepts, such as "mass communication,' "mass communication media,' "agents of mass communication.' Mass communication is defined as imparting information on an unlimited number of persons with a view to ensuring the constitutional right of everyone to seek, receive and impart

information and ideas freely and regardless of state frontiers. Communication is disseminated by the mass communication media.

While analyzing the definitions of the above concepts, it is, first and foremost, necessary to decide on the purpose of their definition. In the previous law, the existence of the institute of registration of mass media perhaps justified the need for such restrictions. The purpose of definitions and the existence of the institute of mass media registration in this Law is totally questionable. It is perhaps possible to assume that definitions are of theoretical significance. In fact, it is important to define the concepts of mass communication or mass communication media for scientific and educational purposes. The contemporary level of technological advance has engendered two groups of mass communication media – print media and electronic media. The electronic mass media, in their turn, are classified into television and radio broadcasting and online (Internet) media. Certain international legal instruments lay down that these three types of media should be regulated in different ways and principles. The regulation of online (Internet) media is not at present encouraged in international instruments.

1.4.2. Legislative Guarantees of the Freedom of the Mass Communication Media

The freedom of speech guarantees enshrined in international legal instruments, are related not only to the mass communication media and journalists but to everybody. The current Law guarantees the freedom of the mass media and the principles of their activities.

The RA legislation no longer requires that then mass media undergo state registration. Nor is there any procedure for notification or declaration. At the same time, Article 13 of the Law mentions about the administrative register of the mass media

maintained by the RA Ministry of Justice based on two mandatory copies sent to the ministry of each issue of a mass medium. A positive move was the prohibition on censorship, which lays down the impermissibility of the requirement of a prior agreement with state bodies regarding certain types of information (paragraph 3 of Article 4). This guarantee must cover not only "urgent information,' deemed communication by the Law, but also any other information. Apart from this, censorship must be prohibited not only for the mass media but also for any manifestation of freedom of speech. For example, no work of art, university lecture, etc. may be subject to censorship. Therefore, rather than being stipulated by the Law on Mass Communication, the prohibition of censorship must be laid down by a legal act of a higher legal force, such as the Constitution.

The attempt to present the possibility of restrictions on dissemination by the mass media as a guarantee (paragraph 5 of Article 4) is also arguable. It is understandable that any exhaustive and clear stipulation of restrictions is a guarantee for the protection of any right in its own right. What is arguable is perhaps the fact that by laying down the most dangerous manifestation of censorship – prior agreement, the Law, however, sets forth a possibility for a ban on dissemination of information. The mechanism whereby it is possible to check the content of the mass media is also unclear. This is the reason why the Law may lay down liability for imparting information in certain cases. However, it is not allowed to prohibit dissemination of any issue of a mass medium. This totally ignores the pertinent provision of the Law, which is not clear or certain in its formulations and may give scope to relevant bodies, including the court to engage in censorship. Finally, another guarantee of freedom of speech is the right of the mass media not to disclose their sources of information, which envisions that even in a criminal case it is not possible to force a journalist to disclose his/her source of

information where the protection of the interests of the public so require and where the alternative ways of the protection of these interests are not exhausted (paragraph 2 of Article 5). In other words, a journalist may refuse to give testimony in a criminal case and disclose the source of his/her information unless the "necessity of the protection of public interests' prevails over "the public interest in disclosing the source of information' and an alternative means of protecting these interests, i.e. the possibility to find the source by another means, is not found. The laying down of the protection of the agents of communication and their secret sources is extremely positive but unrealistic since this provision is contrary to paragraph 2 of Article 86 of the RA Criminal Procedure Code, which provides an exhaustive list of persons who may not be summoned and interrogated as witnesses. The agents of mass communication do not feature in this list and if the legislature is in fact eager to lay down this freedom of speech guarantee they should do so by amending the relevant article of the RA Criminal Procedure Code.

1.4.3. Legislative Restrictions on Freedom of Speech

When speaking about restrictions on freedom of speech, we should stress, once again, that no right is unrestricted and that the international documents regulating these relations also provide for restrictions on this right. In this regard, the Law lays down certain duties for the agents of mass communication in exercising freedom of speech and envisions liability for abuse of this right.

A number of duties that are found in the Law apply not only to the mass media but also to everybody. Consequently, it is welcomed that the cases of impermissibility of freedom of speech-related abuses (Article 7) are not concretized only for the agents of mass communication. For example, the latter must not be under a special duty not to impart information of secret nature or propagate criminally punishable acts as prescribed by law. In

this case, anybody who propagates violence in a rally and in a mass medium should be equated. The same holds true for anybody disseminating a state secret and journalists.

Included among the duties laid down for mass communication is the publication of a refutation and reply. Article 8 of the Law prescribes a pre-trial refutation and reply procedure whereby the volumes of refutation and reply, the medium of publication, deadlines, headings, costs, etc. are regulated. At the same time, they allow the agents of mass communication to reject claims for refutation. In case of rejecting the dissemination of a refutation or reply by an agent of mass communication, a written decision on this is handed over to the claimant within one week's time after receiving the claim for refutation or reply. Following this, where information damaging the honour, dignity or business reputation of a person has been disseminated, s/he may apply to the court with a claim for refutation of this information. In the court, the procedure for examining the disputes related to dissemination of a refutation and reply is regulated by Article 19 of the RA Civil Code. Hence, the relevant regulations of the Law in the pre-trial stage are mainly of a voluntary nature and do not lay down any mandatory cases of dissemination of a refutation or reply by agents of mass communication or the grounds for their rejection. Hence, the extra-judicial solution of this problem may be taken out of the scope of legislative regulation. Where the requirement to submit the decision on rejecting a refutation or reply to the claimant within a week's time is concerned, this provision is of no legal significance since in order to apply to the court the person does not have to pass any pre-trial procedure.

The Law is silent about the grounds for liability and envisions liability for violating the legislation in general, "Engaging in mass communication with a breach of the

requirements of the Law entails liability as prescribed by law' (paragraph 1 of Article 10).

The Law lays down cases of exemption from liability (paragraph 2 of Article 9).

1.5. RA Law on Freedom of Information

The November 2005 amendments to the RA Constitution proclaimed the right to receive information as a constitutional right. The right to receive information was recognized as a fundamental human right. The RA Law on Freedom of Information was adopted on 23 September 2003 and became effective on 15 November 2003. The Law covers not only state and local self-government bodies but also private organizations delivering services in certain areas as well as having a monopoly or a dominant position in the commodity market.

The Law empowers anybody to obtain the whole information possessed by the bodies of public administration and local self-government, as well as private organizations of public significance (including the private organizations delivering public services, as well as private organizations that have a monopoly or a dominant position for offering certain goods or services). The Law obligates these organizations to publicize a whole range of information regardless of whether they have obtained inquiries to that effect. The Law also contains provisions envisioning liability for failing to provide information contrary to the law.

The right of access to information is a fundamental human right proclaimed by a number of international treaties ratified by the Republic of Armenia (see Articles 6, 8 and 10 of the European Convention on Human Rights adopted on 4 November 1950 in Rome and ratified by the Republic of Armenia on 26 April 2002, Article 19 of the International Covenant on Civil and Political Rights adopted on 16 December 1966 in New York and ratified by the Republic of Armenia on 23 June 1993. In the area of

environmental protection see also the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in Aarhus on 26 June 1998 and ratified by the Republic of Armenia on 1 August 2001). The Council of Europe Committee of Ministers (with Armenia as a member) has proclaimed, **the principle of wide access to official documentation based on equality and in conformity with clear rules, which**:

- Enables the public to have a concrete viewpoint and a critical opinion on the current state of the society and public authorities, thereby stimulating informed public participation in determination of issues of general importance;
- Contributes to enhanced efficiency of the work of the authorities and helps to ensure their integrity by avoiding corruption risks;
- Contributes to the legitimacy of the authorities as providers of public services and to strengthened pubic trust towards them.

The international experts have assessed this Law as one of the most progressive laws on freedom of information in the CIS countries. Along with a number of other international organizations, ARTICLE19 also welcomed the adoption of the Law.

The Law has led to significant positive changes. The public authorities, although sometimes with difficulty, have nevertheless reconciled themselves with the idea that they need to work in a transparent and open manner. There are, nevertheless, cases when physical and legal persons have obtained information only by a court decision.

There are also certain problems with regard to the application of the Law. Although it has been effective for quite a long period of time, the Government has not yet adopted the sub-legislative

acts envisioned by the Law which would greatly facilitate its application.

This refers, in particular, to the two procedures mentioned in the Law – the ones mentioned in Article 5 entitled Registration, Categorization and Preservation of Information and Article 10 entitled Terms and Conditions for Providing Information. The journalistic community has explained this sluggishness by the desire of the Government to amend or rather eliminate these provisions of the Law.

On the other hand, the mentioned provisions constitute the most progressive part of the Law whose application without a delay is fully justified. Article 5 and 10 contain important guarantees for freedom of information and must not be amended.

The journalistic community has elaborated the relevant procedures and submitted them to the Government, including:

1. The draft Decision of the RA Government on Approving the Procedure for Circulation of Information among the Bodies of Public Administration, which is necessary to comply with the requirements of Article 5 of the Law;
2. The draft Decision of the RA Government on Approving the Procedure for the Provision of Information or the Copy Thereof by the State and Local Self-Government Bodies, State Institutions and Organizations, which is necessary to comply with the requirements of Article 10 of the Law.

As early as 2006, the Human Rights Defender sent a letter (No 2-0240) to the RA Government inviting the latter's attention to a number of problems related to the application of the RA Law on Freedom of Information requiring urgent solution and creating serious obstacles for the exercise of citizens' constitutional right to receive information.

It referred, in particular, to paragraph 1 of Article 10 of the RA Law on Freedom of Information, according to which information or a copy thereof by state and local self-government bodies, state institutions and organizations is provided in conformity with the procedure prescribed by the RA Government. However, since 15 November 2003, i.e. the date when the RA Law on Freedom of Information became effective, no such procedure has been approved by any governmental decision. As a result, certain state and local self-government bodies have refused to provide information upon request relying on the absence of this procedure. Besides, in conformity with paragraph 4 of Article 11 of the RA Law on Freedom of Information, refusal to provide information may be contested before the authorized body of public administration or the court. However, no such body has been set up by the RA Government.

In September of 2007, the Human Rights Defender sent another letter to the RA Government related to these issues.

The Law on Freedom of Information also clearly states the grounds and procedure for refusing information requiring that all refusals are justified based on the grounds stipulated by the Law. These provisions aim at preventing arbitrariness by public officials.

One of the advantages of the RA Law on Freedom of Information is the fact that the Law envisions legal protection for persons reporting various violations or unlawful acts. Article 8 lays down three groups of information, which may not be classified and have to be immediately publicized. They include, for example, information relating to emergencies threatening the security and health of the population, as well as disasters and their consequences. The provision of such information (even if it is secret) by any public official may not entail administrative or criminal liability (Article 14).

1.6. RA Civil Code

Certain provisions of the RA Civil Code directy regulate relations in the area of freedom of speech too. This refers, in particular, to Article 19 entitled "Protection of Honour, Dignity and Business Reputation.'

These are personal, non-property rights, which, in practice, have been granted fuller protection. The RA Constitution regards the protection of human honour and good name as a ground for restricting a number of constitutional rights and freedoms (Article 43 of the RA Constitution). In conformity with Article 19 of the RA Civil Code, dignity, honour and business reputation are regarded as personal, non-property rights. In theory, "honour' is interpreted as an objective public assessment of a person's moral, political, professional and other qualities, while dignity is the understanding by a person of the public assessment given to him/her or the self-understanding of his/her own merits.

Business reputation is the private manifestation of the objective opinion formed about a person on the basis of publicly valued qualities and the opinion formed about business turnover of a legal or physical person, including his/her business qualities (advantages and disadvantages). The purpose of the above article of the RA Civil Code is the protection of these values. These concepts are not only material goods valued by law but also multifaceted social relations. This is the reason why the RA Civil Code places the burden of regulation not so much on the identification of the content of these concepts but rather on the relations arising in their respect. The article in question not only prohibits the infringement of these values but also ensures wide possibilities for enjoying the subjective rights arising with regard to these goods.

Attention should be paid to the fact that honour and dignity also belong to the sphere of protection of criminal law. The protection of civil law applies when information damaging to a

person's honour and diginity has been disseminated unintentionally.

The article in question lays down the right of a person to demand through the court that information damaging to his/her honour, dignity and business reputation are refuted.

If information damaging to a person's honour, dignity and business reputation has been spread by the mass media it hA to be refuted by the same mass media.

If the information in question is from a document produced by an organization, this document has to be replaced on repealed.

Anybody whose rights and lawfully protected interests have been infringed as a result of information published by the mass media has a right of reply in the same mass media. Anybody about who information damaging to his/her honour, dignity or business reputation is published has a right, along with the right of refutation, to claim damages incurred as a result of the publication.

The above mechanisms are not perfect and may be circumvented without great effort. In practice, there are cases when the text of refutation is essentially the repetition of the text that had to be refuted.

The study of international practice also testifies to the fact that there are no unified prescriptions for this area. As a rule, the solution to the question is found in codes of conduct for the mass media voluntarily adopted by the latter.

1.7. RA Code of Administrative Violations

Two articles of this code are of importance for freedom of speech – Articles 189 and 189.7.

Article 189 is entitled "Dissemination of the Mass Media with no Data on Issue or Failure to Send Mandatory Copies or Failure to Publish the Report for Disclosing the Transparency of Financial Sources and Influences within the Timeframe Set by

Law,' while Article 189.7 is entitled "Failure to Comply with the Duty to Provide Information."

Article 189 prescribes a fine in the amount of ten times the minimum monthly salary for the dissemination of a mass medium whose issue does not contain the data on issue as prescribed by law or for dissemination of a mass medium on a material carrier without sending the mandatory copies to the relevant destinations or for failure to publish the financial transparency report of a mass medium within the timeframes laid down by law.

The same violation, when committed for a second time within one year following the imposition of an administrative penalty entails another fine on the agent of mass communication in the amount equal to twenty times the minimum monthly salary.

Article 189.7 lays down an important freedom of information guarantee. It envisions a fine from ten to fifty times the minimum monthly salary for unlawful failure by the officials of state and local self-government bodies, state institutions, organizations funded from the state budget, as well as of organizations of public significance to provide information.

The same violation when committed for another time within one year following the imposition of an administrative penalty entails a fine amounting from fifty to hundred times the minimum monthly salary.

In practice, the application of the provisions of this article by courts is not infrequent.

1.8. Legal Acts in the Area of Accreditation of Journalists

Article 6 of the RA Law on Mass Communication lays down the institute of jurnalist accreditation, "1. The agents of mass communication have a right to apply to state bodies for accreditation of their journalists.

The state body is obliged to accreditate the journalist within a five-day period in conformty with this law and the accreditation procedure of journalists within that body.'

The institute of accreditation may be regarded as both a freedom of speech guarantee and a restriction thereof. Nevertheless, any accreditation system is a restriction on the access of persons to those bodies and organizations, which have set accreditation procedures. Indeed, it is possible to follow the activities of these bodies through official reports. However, this by no means diminishes the importance of personal access to receive and impart the relevant information. On the other hand, in order to have a better organization of their work and impart information in a more organized manner, state bodies need to establish specific procedures, which will coordinate the activities of journalists within those bodies or organizations.

This is the reason why accreditation under conditions of effective organization of information dissemination may act as a guarantee for the protection of freedom of speech but only when such procedures are clear, in line with democratic principles and may not engender arbitrariness or discrimination.

On 4 March 2004, the RA Government by its Decision N 333-N and on the basis of paragraph 4 of Article 6 of the Republic of Armenia Law on Mass Communication approved the model procedure of journalists' accreditation in public administration bodies of the Republic of Armenia.

The procedure lays down the rules of accreditation of a journalist or an agent of mass communication in public administration bodies and the main provisions on organizing the activities of an accredited journalist in a public body with a view to ensuring the transparency of the activities of a public body and creating favourable conditions for journalists to receive direct information on these activities.

This procedure ensures unity, which, in its turn facilitates the procedure for journalists' accreditation. The above procedure contains certain provisions, which in practice may engender obstacles both at the stage of accreditation and during work of accredited journalists.

Firstly, it should be mentioned that the procedure lays down provisions and regulates relations, which have nothing to do with journalists' accreditation. The procedure should, normally, lay down exclusively procedural norms. However, already paragraph 3 of the procedure refers to the duties of a public body, according to which:

"The public body:

1. does not in any way engage in censorship of the professional activities of an accredited journalist;
2. ensures non-discriminatory conditions for all accredited journalists.'

The fact that censorship is prohibited stems from the Constitution and the laws. It is groundless and unacceptable to repeat the provisions of an act of a higher legal force in an act, which is not meant to regulate such relations. The provision in sub-paragraph "b' is even less clear. Even with the greatest desire it is impossible to find a link between an accreditation procedure and the duty of a state body to ensure non-discriminatory conditions. The principle of non-discrimination again stems from the Constitution and is laid down in the RA Law on the Fundamentals of Administration and Administrative Proceedings. Therefore, there is no point in repeating it in a sub-legislative act.

The grounds for termination of accreditation by a state body are not clear or certain, if not outright groundless. They are laid down in paragraph 13 of the procedure, "The state body may terminate the journalist's accreditation if...', the use of the term "may' is unclear here, since it essentially leaves it to the discretion of the state body to terminate or not to terminate the accreditation

in on the basis of the mentioned grounds. However, this discretion is unacceptable where there are the following grounds: a) the journalist was declared incapacitated; d) the person engaged in communication has applied for termination of his/her accreditation; e) the agent of mass communication that has nominated the journalist has terminated its activities and the actvities of all the mass media represented by the journalist have been terminated. Paragraph "c' reads, if s/he has disseminated information about the activities of the state body, which do not conform to the reality, as confirmed by the court decision. In case of literal interpretation of this article a journalist's accreditation may be terminated, in particular, where the journalist has made some kind of a mistake in his/her reportage, such as the time of beginning of an institution's session and the mistake continues for a couple of minutes, while where a journalist is declared incapacitated, the state body may decide not to terminate his/her accreditation since this is left to his/her discretion.

Paragraph 4, which relates to the rights of accredited journalists has nothing to do with the object of regulation of the procedure and the majority of stipulated rights are already reflected in acts of a higher legal force or, if they are not reflected, then they should.

In conformity with paragraph 19 of the procedure, "The instructions of the person in charge of the state body directed at the organization of the accredited journalist's activities on the permises of the state body are mandatory for accredited journalists.'

In conformity with sub-paragraph 2 of paragraph 4 of Article 9 of the RA Law on Legal Acts, restrictions on the rights and freedoms of physical and legal persons and their duties are defined exclusively by a law. And in conformity with paragraph 4.1 of the same article, "rules, procedures or technical norms (urban development, sanitary, firefighting, accounting,

standardization) regulating the exercise by physical or legal persons of their rights and duties prescribed by law may, in cases and boundaries prescribed by a law, be envisioned in other legal acts, which may not contain new restrictions of rights or duties.'

On 21 August 2009 (CD-003-4), the Chairman of the National Assembly, on the basis of the sub-paragraph "k' of paragraph 1 of Article 18 of the RA Law on Rules of Procedure of the National Assembly and Article 6 of the RA Law on Mass Communication, approved the procedure for accreditation of journalists in the National Assembly of the Republic of Armenia.

Although paragraph 1 of this procedure stipulates that "This procedure lays down the rules of accreditation of journalists in the National Assembly of the Republic of Armenia,' the provisions found in the procedure regulate relations that essentially have nothing to do with accreditation.

The logic and structure of the RA legislation in this field is the following: the law already defines who journalists are while the relevant bodies must set up the procedure for their accreditation. No legal act may confer on the Chairman of the National Assembly to decide journalists of what mass media may or may not by accredited. However, Article 10 of the above procedure introduces groundless differentiations between journalists having no legal basis for this by allowing the accreditation of certain journalists.

> The following journalists may be accredited: from newpapers registered in the RA Ministry of Justice and having 1500 copies or more, journals having 1000 copies and more, Internet media having 800 and more visitors per day and updated once a week, journalists of news agencies, radio companies, television companies and journalists from foreign television and radio companies that have reporting stations in Yerevan.

According to the above justification, the grounds for termination of a journalist's accreditation ahead of time must be established by a law.

The above objections regarding journalists' duties also refer to this procedure.

Article 6 of the RA Law on Mass Communication envisions only one case of depriving a journalist from his/her accreditation. Paragraph 5 of the Article stipulates, "A journalist's accreditation may be terminated on the basis of an application from the agent of mass communication that has nominated him/her for accreditation.' The Law envisions no other case of depriving a journalist from accreditation. Of special concern in the procedure approved by the Chairman of the NA is paragraph "c', according to which a journalist is deprived of accreditation if s/he has disseminated information about the activities of the National Assembly and its staff that does not conform to the reality, as established by a court judgment. Worrying are especially two provisions relating to accredited journalists in paragraph 23 of the procedure.

> 23. The accredited journalist is under a duty:
>
> a) when engaged in his/her professional activities, to respect the lawful interests, honour and dignity of the members of the National Assembly and the Staff;
>
> b) by his/her professional activities or other actions, not to impede the performance of their professional duties by the members of the National Assembly, persons present (participating) in the sessions of the National Assembly, as well as the members of Staff.

In general, the duty to respect everybody's (and not only NA members') rights and lawful interests, honour and dignity by everybody else (and not only journalists) is regulated by both the RA Constitution and the laws, and envisaging them in a procedure is of no sense. And since by paragraph 18 of the procedure, the

NA deems that it has a right to deprive of accreditation those journalists who "violate the requirements of the laws or "The Instructions on the Protection of the Administrative Building and the Premises of the National Assembly of the Republic of Armenia' or the Rules of Work Discipline in the National Assembly or this procedure,' the possible undesirable consequences for journalists become more than evident.

1.9. Freedom of Speech-Related Draft Laws in Circulation

In 2009, 3 members of the National Assembly circulated a package of drafts on Making Amendments and Supplements to the Republic of Armenia Civil Code, on Making Amendments to the Republic of Armenia Criminal Code and on Making Amendments to the Republic of Armenia Criminal Procedure Code, relating to freedom of speech and, in particular, to the decriminalization of defamation and insult, as well as the amounts of damages and the procedure for their payment. The circulated drafts, along with the decriminalization of defamation, envision payment of damages in the amount of 1 million AMD and amount of 2 million AMD in case of dissemination of defamatory and insulting material, respectively, by any mass medium.

Of interest is the fact that the legislative initiative was taken following two negative opinions of the CoE Venice Commission on these draft laws. Journalists are concerned that the RA authorities that fully control television companies will attempt to silence the press, which is relatively free. The draft laws circulated in the National Assembly contain certain controversial provisions. For example, Article 5 provides that it is allowed to freely engaged in defamation within the walls of the National Assembly: "The factual data mentioned in paragraph 3 of this Article are not interpreted as defamation if they are found in:

a) speeches made during parliamentary hearings and sessions;
b) announcements made in the hearings of the legislature's standing or ad hoc committees provided this concerns an issue debated by this body;
c) announcements made by a trial participant, which is related to the circumstances of the examined case;
d) statements made in a discussion on a scientific or public issue, if it is proved that the person who has disseminated them has taken reasonable measures to find out the truth and (or) justify the accusations contained therein, as well as has presented these data in a balanced and conscientious manner.'

It is unclear what is understood by the authors under balanced and conscientious defamation. Furthermore, the draft law contains a number of vague provisions. For example, after defining insult it stipulates, "an expression is not meant to have made with an intention to damage a person within the meaning of this article if in a specific situation and by its content it is conditioned by a prevailing public or a lawful private interest.' It appears that where there is a prevailing public interest or a proportionate private interest it is allowed to insult or swear at somebody. The draft also contains grounds that support censorship, "If the intention or gross negligence of a person has resulted in the dissemination of an insult or defamation by a mass medium, then this person has to pay a lump-sum amount of money equal to 1000 times the minimum monthly salary in case of defamation and for up to 500 times the minimum monthly salary in case of insult.' Article 10 establishes liability for the mass media, "in case the insult or defamation has been spread through the mass media except when this information has been disseminated via television and, if by a live radio broadcast, then the person who has incurred damages has a right to demand from

the person engaged in mass communication to pay a lump-sum amount of up to 2000 times the minimum monthly salary in case of defamation and of up to 1000 times the minimum monthly salary in case of insult.' Therefore, the provisions that were the object of concern of journalists are still there and the circulated draft does not alleviate them.

The next package of circulated drafts in this field is the package of drafts on Making Amendments and Supplements to the Law of the Republic of Armenia on Mass Communication and the Law on Making Amendments and Supplements to the Republic of Armenia Criminal Code submitted as a legislative initiative by Victor Dallakyan, member of the Republic of Armenia National Assembly. Although the memo of the package mentions that, "the adoption of the package of these drafts is conditioned by the need to regulate the issues related to the rights, duties and protection of journalists,' it has, nevertheless, engendered concern among the journalistic community and was qualified as a stick against them. There are people who believe that there is no need for such a draft.

And indeed, a number of provisions included in the drafts repeat the provisions enshrined in the Constitution, which is an act of a higher legal force and a number of rights that are laid down for journalists are of relevance to everybody.

Of interest is the fact that on 30 July of the previous year the Government was against the adoption of the package of drafts in the form they were presented then.

The next relevant draft in circulation envisions amendments and supplements to the Republic of Armenia Criminal Procedure Code. The legislative initiative in this case belonged to Hovhannes Margaryan, member of the Rule of Law faction of the National Assembly. The draft was included in the agenda of the four-day sitting of 22 February 2004 of the National Assembly. It proposes that paragraph 2 of Article 86 be supplemented with

sub-paragraph 6 with the following wording, "6. The agent of communication and the journalist, in order to identify the source of information by a court decision in case of a criminal case to detect a grave or an especially grave crime, if the need for the protection of public interests via criminal law prevails over the interest of the public in non-disclosure of the source of information and all other means of protecting public interests are exhausted.'

Essentially, once this draft is adopted in its current form, it will eliminate the controversies between the provisions of Article 86 of the Criminal Procedure Code and Article 5 of the Law on Mass Communication.

2. International Freedom of Speech Standards

Freedom of speech has long stopped being an object of regulation by domestic legislation. Depending on the importance of freedom of expression, it is stipulated in almost all international instruments relating to fundamental human rights, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1950 European Convention for the Protection of Humn Rights and Fundamental Freedoms, the 1995 CIS Convention on Human Rights and Fundamental Freedoms.

Various Council of Europe bodies have adopted a number of resolutions to specify the provisions of the European Convention. Mention should be made of the wide array of recommendations and resolutions adopted by the Committee of Ministers and the Parliamentary Assembly. Of special significance is also the case-law of the European Court of Human Rights. In the course of many years the Court has made numerous judgments with regard to Article 10, thereby developing an extensive case-law, which

stresses the special role and value of freedom of expression in a democratic society.

A number of international acts ratified by the RA also contain provisions on freedom of expression, including the Programme of Support to Information Society and Democratic Governance, signed between the RA Government and the UN Development Programme, the Agreement on Establishing an Interstate Council for Co-operation in the Area of the Periodic Press, Publishing, Dissemination and Polygraphy, Agreements on Co-operation between the CIS Member States in the Area of the Periodic Press, the Agreement on Developing Information Resources and Systems of the CIS Member States and Co-operation in the Area of Implementation of Interstate Programmes, etc.

In conformity with Article 19 of the Universal Declaration of Human Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

While in accordance with Article 19 of the International Covenant on Civil and Political Rights:

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.
In conformity with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licencing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.1. Content of Freedom of Speech

Freedom of speech is the right of everyone, of physical and legal persons. Furthermore, this right is not restricted within the boundaries of a state. It is guaranteed regardless of state frontiers.

According to Article 10 of the Convention, the human right to freedom of expression consists of the following 3 elements:

- Freedom to have one's own opinion;
- Freedom to receive information and ideas;

- Freedom to impart information and ideas.

Article 19 of the International Covenant on Civil and Political Rights also stresses the freedom to seek information and ideas.

The European Court of Human Rights has clearly recognized the public's right to be informed. In a number of cases, the Court has stated that Article 10 of the Convention guarantees not only the freedom of the press to inform the public but also the right of the public to be duly informed (for example, *Sunday Times v the United Kingdom*, Judgment of 26 April 1979). The right of a person to receive information, as well as access to general sources of information may not be restricted by the authorities.

In its Recommendation of February 1979 the Council of Europe Parliamentary Assembly states that it is desirable for the public with limited exceptions to have access to governmental information. The Parliamentary Assembly recommends that access to governmental data is ensured, this including the right to seek and receive information.

In conformity with Recommendation R(2002)2 of the Committee of Ministers of the Council of Europe on the Access to Official Documents, member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground.

The same Recommendation also stipulates that the right to access to official documents may be limited.

All limitations should be set down precisely in law, be necessary in a democratic society and be proporionate to the aim of protecing:

- national security, defence and international relations;
- public safety;
- the prevention, investigation and prosecution of criminal activities;

- privacy and other legitimate private interests;
- commercial and other economic interests, be they private or public;
- the equality of parties concerning court proceedings;
- nature;
- inspection, control and supervision by public authorities;
- the economic, monetary and exchange rate policies of the state;
- the confidentiality of deliberations within or between public authorities during the initial preparation of a matter.

Access to a certain document may be refused if the disclosure of the information contained in the official document would be likely to harm any of the mentioned interests, unless there is an overriding public interest in disclosure.

A public authority refusing access to an official document wholly or in part should give reasons for the refusal. An applicant whose request has been refused, should have access to a review procedure before a court of law or another independent and impartial body established by law.

Freedom of expression, almost without any exceptions, applies to information of any type or content.

According to the European Court of Human Rights, Article 10 applies "not only to "information and ideas' that are favourably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the population' (*De Haes and Gijsels v Belgium*, Judgment of 24 February 1997).

Any information is subject to protection, be it an opinion, idea, philosophical judgment or political speech. However, information on issues of public importance is endowed with a higher level of protection.

According to the case-law of the European Court, maximum protection granted by Article 10 of the Convention is accorded not only to purely political debates but also to any public discussion involving public interest.

The European Court has also accepted the possibility of a more severe criticism of politicians and governments. The Court has found that "The limits of acceptable criticism are …wider as regards a politician as such than as regards a private individual: unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance' (*Lingens v. Austria*, Judgment of 8 July 1986).

Where the government is concerned, the limits of acceptable criticism are even wider than as regards politicians inasmuch as "in a democratic system the actions and omissions of the government must be subject to close scrutiny …of the press and public opinion' (*Castels v. Spain*, Judgment of 23 April 1992).

The Court has found that free dissemination of information on the activities of the judicial and law enforcement bodies is permissible. In conformity with the Recommendation R (2003)13 of the Council of Europe Committee of Ministers on the Provision of Information through the Media in Relation to Criminal Proceedings, "[t]he public must be able to receive information about the activities of judicial authorities and police services. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under [concrete] principles.'

The judgment of the European Court in the famous case of *Sunday Times v the United Kingdom* reads that it is incumbent on the mass media "to impart information and ideas concerning matters that come before the courts just as in other areas of public

interest' (*Sunday Times v. the United Kingdom*, Judgment of 26 April 1979).

In conformity with the case-law of the Court, Article 10 is applicable not only to political but also commercial information as well as advertising (*Casado Coca v. Spain*, Judgment of 24 February 1994).

The European Court has also clearly differentiated between facts and value judgments. While it is possible to prove facts, value judgments cannot be supported by facts since they belong to the sphere of convictions and preferences. This means that Article 10 of the Convention accords stronger protection to value judgments.

Of special importance to freedom of expression is the freedom of the mass media. As regards the press, the Court has even accepted that it may rely on a certain degree of exaggeration. In one of its judgments the Court has stated that journalistic freedom allows journalists to resort to a certain degree of exaggeration or even provocation (*Informationsverein Lentia and others v. Austria*, Judgment of 24 November 1993).

In general, it should be noted that the main precondition for ensuring freedom of expression is the freedom of the mass media.

The 2 Resolutions adopted by the Committee of Ministers in Prague in 1994 set down that journalism in electronic and print media is based mainly on the fundamental right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights and as interpreted by the case-law of the Convention bodies (Principle 2).

In conformity with the first principle of the Resolution, "the maintenance and development of genuine democracy require the existence and strengthening of free, independent, pluralistic and responsible journalism. This requirement is reflected in the need for journalism to:

- inform individuals on the activities of public powers as well as on the activities of the private sector, thus providing them with the possibility of forming opinions;
- allow both individuals and groups to express opinions, thus contributing to keeping public and private powers, as well as society in general, informed of their opinion;
- submit the exercise of the various types of powers to continuous and critical examination.'

Resolution 428(1970) of the Parliamentary Assembly of the Council of Europe contains a number of necessary principles to enable the mass media to perform their functions in the best interests of the society:

- "The independence of the press and other mass media from control by the state should be established by law. Any infringement of this independence should be justifiable by courts and not by executive authorities.
- There shall be no direct or indirect censorship of the press, or of the contents of radio and television programmes…. Restrictions may be imposed within the limits authorized by Article 10 of the European Convention on Human Rights.
- The independence of mass media should be protected against the dangers of monopolies….Neither individual enterprises, nor financial groups should have the right to institute a monopoly in the fields of press, radio or television, nor should government-controlled monopoly be permitted.'

In accordance with Recommendation No R (96) 4 of the Committee of Ministers to Member States on the Protection of Journalists in Situations of Conflict and Tension, "Member states shall not restrict the use by journalists of means of communication for the international or national transmission of news, opinions,

ideas and comments. They shall not delay or otherwise interfere with such transmissions.' The same Recommendation requires Members states to "ensure that, in their dealings with journalists, whether foreign or local, public authorities … act in a non-discriminatory and non-arbitrary manner.'

An important element of journalistic freedom is also the right of journalists to non-disclosure of their sources of information. In conformity with the First Principle of Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe, "[d]omestic law and practice in member states should provide for explicit and clear protection of the right of journalists not to disclose information identifying a source in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms… and the principles established herein, which are to be considered as minimum standards for the respect of this right….The right of journalists not to disclose information identifying a source must not be subject to other restrictions than those mentioned in Article 10, paragraph 2 of the Convention.'

Freedom of expression has to do not only with the content of information but also the ways and means of imparting it.

In accordance with Article 19 of the UN Covenant on Civil and Political Rights, a person's opinion may be imparted "either orally, in writing or in print, in the form of art, or through any other media of his choice.'

According to the case-law of the European Court of Human Rights, Article 10 of the Convention is applicable not only to information and ideas imparted via written and oral speech but also those imparted by paintings, films and other artwork, as well as any means of transmission, including electronically. For example, Recommendation R (92) 19 of the Council of Europe Committee of Ministers on Video Games with a Racist Content

recommends that the governments of member states treat video games as mass media.

In a judgment issued in relation to one of the cases before it, the Court noted that "Article 10 [of the Convention] applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive or impart information' (*Autronic AG v. Switzerland*, Judgment of 22 May 1990).

An important issue related to freedom of expression is also the status of the bodies regulating this sphere.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that "[t]his article shall not prevent States from requiring the licencing of broadcasting, television and cinema enterprises.'

In a judgment issued in a case before it, the Court found that the object and purpose of the last sentence of Article 10 of the Convention, and equally, the scope of its application must be viewed in the overall context of the Article and, in particular, in connection with the requirements of its paragraph 2. Paragraph 2 sets down the scope of legitimacy of the possible limitations of freedom of expression. In other words, it has to be decided whether the terms and conditions of licencing comply with the state requirements (*Informationsverein Lentia and others v. Austria*, Judgment of 24 November 1993).

In other words, the measures taken by states with regard to licencing must not be contrary to the goals and objectives of Article 10 of the Convention.

Furthermore, according to the Court, refusal to grant a licence may be conditioned by the legitimate aims stated in paragraph 2 of Article 19. In this case, the scope of potential aims is even wider (*Informationsverein Lentia and others v. Austria*, Judgment of 24 november 1993).

In a 1986 decision, the European Commission of Human Rights found that states do not have an unlimited freedom with regard to evaluation of the licencing system. Refusal by a state to grant a licence must not be ungrounded and discriminatory in order not to contradict the principles and rights set forth in the Convention. The licencing system must comply with the requirements of pluralism, tolerance and free-mindedness that constitute the cornerstone of democracy.

In conformity with Recommendation (2000) 23 of the Committee of Ministers, the provisions of the procedure for granting a broadcasting licence should be certain, clear and applied in an open, transparent and impartial manner. Recommendation (2000) 23 of the Committee of Ministers of the Council of Europe on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, sets a number of criteria for the regulatory authorities in the broadcasting sector. In particular, it mentions that the activities of such bodies should be based on the principle of independence and transparency. The members of these authorities should be appointed in a democratic and transparent manner. They may not receive any mandate or take any instructions from any person or body. Specific rules should be defined as regards incompatibilities in order to avoid that:

- "regulatory authorities are under the influence of political power;
- members of regulatory authorities exercise functions or hold interests in enterprises or other organizations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.'

Dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted. Precise rules

should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.

Arrangements for the funding of regulatory authorities – another key element in their independence – should be specified in law in accordance with a clearly defined plan, with a reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently. Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities.

One of the essential tasks of regulatory authorities should be monitoring compliance with the conditions laid down in law and in the licences granted to broadcasters. Regulatory authorities should not exercise *a priori* control over programming and, consequently, the monitoring of programmes should always take place after the broadcasting of programmes.

Regulatory authorities should be accountable to the public for their activities, and should, for example, publish regular or ad hoc reports relevant to their work or the exercise of their missions.

Of importance is also the independence of public service television and radio broadcasters. According to Resolution No 1 adopted in the Conference of the Council of Europe Committee of Ministers, member States undertake to guarantee the independence of public service broadcasters from any political and economic interference. In particular, day to day management and editorial responsibility for programme schedules and the content of programmes must be a matter entirely for broadcasters themselves. This independence must be guaranteed by appropriate structures such as pluralistic internal boards or other independent bodies. Public service broadcasters must be directly accountable to the public. To that end, public service broadcasters should regularly publish information on their activities and develop

procedures for allowing viewers and listeners to comment on the way in which they carry out their missions.

The Appendix to Recommendation No. R (96) 10 of the Council of Europe Committee of Ministers lays down that, "the rules governing the status of the boards of management of public service broadcasting organizations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference. These rules should, in particular, stipulate that the members of boards of management or persons assuming such functions in an individual capacity:

- Exercise their functions strictly in the interests of the public service broadcasting organization which they represent and manage;
- May not, directly or indirectly, exercise functions, receive payment or hold interests in enterprises or other organizations in media or media-related sectors where this would lead to a conflict of interest with the management functions which they exercise in their public service broadcasting organization;
- May not receive any mandate or take instructions from any person or body whatsoever other than the bodies or individuals responsible for the supervision of the public service broadcasting organization in question, subject to exceptional cases provided for by law.'

The Appendix of the same Recommendation also stipulates that, "the decision-making power of authorities external to the public service broadcasting organization in question regarding its funding should not be used to exert, directly and indirectly, any influence over the editorial independence and institutional autonomy of the organization.'

Restrictions on Freedom of Speech: Paragraph 2 of Article 10 stipulates that the exercise of the right to freedom of expression "since it carries with it duties and responsibilities' may be subject

to certain "formalities, conditions, restrictions or penalties,' which will be compatible with Article 10 of the Convention if they conform with the conditions set forth in paragraph 2 of Article 10.

Therefore, the right to freedom of expression may be restricted and this restriction will be in line with Article 10, if:

1. it is prescribed by law;
2. it complies with one of the legitimate aims envisioned in paragraph 2 of Article 10, and
3. it is necessary in a democratic society.

Article 19 of the International Covenant on Civil and Political Rights also envisages restrictions on freedom of expression. According to it, any restriction must be prescribed by law and be necessary for the protection of the rights and reputation of other persons, national security, public order, health or moral of the population. The scope of legitimate interests is wider in the Convention.

Restrictions on the right to freedom of expression are acceptable for the Court if the above three conditions are ensured at the same time.

The requirement of being prescribed by law means that not only must the interference with the right guaranteed by the Convention be prescribed directly by law but that it must also meet certain requirements. There has to be proper access to the law which would enable the person, under certain circumstances, to know what legal norms will be applied. Also, any restrictive norm of the law must be formulated with utmost precision to enable the person to foresee the consequences that may arise under these circumstances (*Sunday Times v. United Kingdom*, Judgment of 26 April 1979).

Any restriction on freedom of expression must aim at the protection of the exhaustive list of values stipulated in paragraph 2 of Article 10. These values are the national security, territorial integrity or public safety, prevention of disorder or crime,

protection of health or morals, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence or the maintenance of the authority and impartiality of the judiciary.

The third condition is the necessity of the restriction in a democratic society. Any restriction of freedom of expression must comply with the criterion of necessity. Any restriction of freedom of expression must satisfy a pressing social need, be reasoned and proportionate to the aim pursued. However, depending on a legitimate aim, the standards of necessity of interference are not the same. Depending on the peculiarities of varying legitimate aims, the necessity of interference by the state is assessed differently.

When assessing the reasons put forward for restricting freedom of expression, account should be taken of circumstances, such as the nature of contested restriction, the degree of interference, the nature of opinion and information relating to the case, the political and social factors, the persons involved, the context and the public.

The Council of Europe bodies have adopted a number of instruments to prevent possible abuses of freedom of expression, including the Recommendation R (89) 7 of the Council of Europe Committee of Ministers on the Distribution of Videograms having a Violent, Brutal or Pornographic Content, Recommendation No. R (92) 19 on Video Games with a Racist Content, Recommendation No. R (97) R on the Portrayal of Violence in the Electronic Media, etc. The names of instruments prompt us that they are directed against propagation of violence, aggression, racism and other malicious phenomena.

A number of instruments underline the necessity to fight against unjustified detention of journalists and other unjustified restrictions on their rights. Recommendation 1589 (2003) of the Council of Europe Parliamentary Assembly on Freedom of

Expression in the Media in Europe lays down that all journalists imprisoned for their legitimate professional work must be set free and legislation that makes journalistic freedom of expression subject to criminal prosecution must be abolished.

3. General Analysis of Violations of Journalists' Rights in the Republic of Armenia

Freedom of speech, however clearly prescribed by law, is impossible to bring to life without journalists who seek, find, collect, process and impart the necessary information to the public. It is especially the effectiveness of journalists' work that allows the public to be informed and, therefore, their right to receive information be fulfilled. Consequently, it is possible to argue that any infringement of journalists' rights is directed not only against a particular journalist or a particular mass medium but the public to limit the people's right to freedom of speech. This is the reason why the analysis of the infringements of journalists' rights, of the limitations on their right to receive information as well as of other cases of violations of their rights in the Republic of Armenia may allow people to form a picture of the general freedom of speech situation in the country.

The facts and incidents reflected in this report are the outcome of studies conducted by the Yerevan Press Club and the Committee to Protect Freedom of Speech.

3.1. Incidents of Violence against Journalists

First, it is important to address the most dangerous incidents of violations of journalists' rights in the RA – ***violence against journalists*** – resulting not only in violations of freedom of speech but also of a person's right to life and right to health.

On 24 August 2002, the founder and executive manager of the private television company *Abovyan* was beaten in the editorial office of the company by unknown people. This followed

"unauthorized' shootings in one of the trading posts of the town. These unknown people also seized the films. In a press conference on 30 August, the manager accused the mayor of Abovyan whose work had been consistently criticised by his television company. The victims regularly stated that they were unhappy with the progress of the preliminary investigation.

On 18 September, the television company *Abovyan*, which had earlier suspended its activities went on the air again. On 19 September, following a meeting with representatives of the mass media, the mayor of Abovyan in a live transmission apologized for what had happened. The experts found a link between this action of the mayor's and the election campaign.

In the evening of 28 December 2002, Tigran Naghdalyan, a prominent journalist, the chairman of the Public Television and Radio Council was killed. The RA Prosecutor General instituted a criminal case on the fact of murder. The organizers and perpetrators of the murder were detected and convicted. According to the findings of the prosecution, the motive of the murder had to do with Tigran Naghdalyan's professional activities.

On 27 September 2003, G.M., the chief editor of the daily periodical *Or* and her huspand, who was the manager of the daily in question were assaulted in Yerevan at night. When returning home they were stopped by a Niva car and the four men which came out of the it hit R.H. on his head. When G.M. tried to call the police, she was taken out of the car by the four men who gave her hard blows on her face as a result of which her nose was broken.

The staff of the daily *Or* made a statement insisting that the incident had to do with the victims' professional activities and, in particular, with the publication of a number of articles critical of the public authorities.

The culpable were not found and the newspaper which had stopped its activities as a result of the incident with the management was never issued again.

In the morning of 30 March 2004, Mickael Danielyan, President of the Helsinki Association of Armenia and reporter of the Russian News Agency *Prima* was beaten. Four unknown persons assaulted the human rights defender and beat him cruelly as a result of which the victim was hospitalized with a brain concussion. A criminal case was instituted on the incident but the crime was not detected.

On 5 April 2004, during an opposition rally a number of people started throwing eggs in the direction of speakers and blowing firecrackers. When the journalists and cameramen attending the rally tried to film them they were assaulted by these people. As a result of the assaults a number of journalists and cameramen were physically hurt and expensive equipment belonging to certain television companies was damaged and broken.

On 8 April, the RA Police instituted a criminal case on the incident based on the features of Article 258 of the RA Criminal Code. A month later two persons were arrested. They admitted to assaulting the journalists and were indicted on the basis of Article 185 of the RA Criminal Code (Intentional Damage or Destruction of Property). In June, the first instance court of Yerevan Kentron and Nork-Marash communities found the above persons guilty and fined them in the amount of 100 000 AMD.

On 12 April 2004, around midnight when the law enforcement bodies were forcefully terminating an opposition rally, violence was used against four journalists with a view to impeding their professional activities. Part of their equipment was also damaged.

Later the law enforcement bodies denied the fact of using violence agtainst journalists. Several criminal cases were

instituted on incidents involving journalists. However, nobody was held liable for beating the journalists.

In the morning of 13 October 2004, Samvel Alexanyan, editor-in-chief of the newspaper *Syunyats Yerkir* was subjected to violence in the town of Kapan. According to him, three men came to their editorial office. They invited Mr Alexanyan out and after a few questions hit him on his face and beat him with a stick. They also destroyed the office property and demanded that the rooms be vacated within an hour. A criminal case was instituted on the fact of hooliganism. On 24 June 2005, the first instance court of Syunik region discontinued the assault proceedings against Samvel Alexanyan in the editorial office of the newspaper *Syunyats Yerkir*.

In the morning of 6 September 2006, the editor of the newspaper *Iravunq* Hovhannes Galajyan was subjected to violence. When the journalist came out of his house, two persons assaulted him and started hitting him without uttering a word. A criminal case was instituted on the basis of Article 118 of the RA Criminal Code (Beating). According to Galajyan, during the days preceding and succeeding the incident he received threats. Pointing that he had no enemies, Galajyan linked the incident with his professional activities. The persons that had beaten the journalist were not detected or punished.

On 11 August 2008, while coming out of her house, Lusine Barseghyan, reporter of the newspaper *Haykakan Zhamanak* was beaten. A criminal case was instituted on the incident but the criminals were not detected.

On 18 August 2008, Hrach Melkumyan, acting manager of the Yerevan Bureau of the Armenian service of Radio Liberty was assauled and beaten. The culpable were not detected.

On 17 November 2008, at about 20.00 Edik Baghdasaryan, President of the NGO Investigative Journalists and editor-in-chief of the online medium *Hetq* was assaulted in the center of

Yerevan. Three unknown men subjected the journalist to cruel beating. The Investigative Department of the Kentron Police of Yerevan instituted a criminal case on the fact of the crime on the basis of Article 258 (Hooliganism) of the RA Criminal Code. Some Karen Harutyunyan was charged and later, on 4 June 2009, before the court of common jurisdiction of Kentron and Nork-Marash he denied his involvement in the incident. On 23 June, Karen Harutyunyan was convicted to a 5-year term of imprisonment while the other two perpetrators of the assault were not detected.

On 13 March 2009, Gagik Shamshyan who had arrived to photograph a student protest was beaten in the State Linguistic University after V. Bryusov. When Shamshyan succeeded in entering the building and taking pictures against the will of the security staff, a clash started between the latter and the journalist. The Police of Kentron Community instituted a case on the basis of Article 164 (Interference with a journalist's lawful professional activities) and Article 118 (Beating). On 14 July the criminal prosecution was discontinued by the application of the act of amnesty adopted by the RA NA on 19 June 2009.

At dawn of 30 April 2009, at about 5a.m., Argishti Kiviryan, Co-ordinator of the news agency *ArmeniaToday* was beaten severely at the entrance to his house in Yerevan. Unknown people assaulted him with sticks when the journalist was returning home from his office located in the same building. Argishti Kiviryan was transported to the Erebouni Medical Centre in a bad condition with numerous injuries of his head and body.

The Police instituted a criminal case on the incident on the basis of Article 117 of the RA Criminal Code (Intentionally Causing Light Injury to Health), which was severely criticised by jurists and human rights watchdogs. Later, the case was referred to the Investigatory Department of the RA National Security Service where it was requalified under Article 34-104 of the RA

Criminal Code as an attempt to murder. On 11 July, the court of common jurisdiction of Kentron and Nork-Marash communities chose detention as a preventive measure against the two persons suspected of commission of the crime. They were charged for the attempt to murder Argishti Kiviryan. The investigation of the case continues but no one has been arrested.

In the evening of 6 May 2009, violence was exerted on Nver Mnatsakanyan, commentator of the television company *Shant*. Two unknown persons ambushed the journalist closer to his house, assaulted him, knocked him down and fled. A criminal case was instituted in the Mashtots Police department of Yerevan on the fact of assault on Nver Mnatsakanyan on the basis of Article 113(2)(3) of the RA Criminal Code (Intentionally Causing a Medium Level Harm to Health by a Group of Persons or an Organized Group) but the culpable have not been detected yet.

In 2009, the maximum number of incidents of violence against journalists was registered on **31 May** during the elections to the Council of Yerevan. Included among the journalists assaulted on that day were Gohar Veziryan, reporter of the newspaper *Chorrord Ishkhanutyun*, Artur Hovakimyan, freelance reporter of the newspaper *Haykakan Zhamanak*, Armine Avetyan, journalist of the newspaper *168 zham*, Lilit Tadevosyan, reporter of the website *Tert.am* and Nelli Grigoryan, reporter of *Aravot* daily.

On 1 June, the day following the elections, the RA General Prosecutor's office issued a press release informing that a criminal case was instituted on incidents of violence against journalists and ballot-box stuffing in Malatya-Sebastya community. However, none of the persons having violated the journalists' rights was held liable.

These cases are not exhaustive. The real number of incidents of violence against journalists is higher. However, even the above incidents are sufficient to conclude that freedom of speech is not

fully developed in Armenia yet and journalists cannot perform their professional duties in a safe environment. Incidents of violence against journalists undermine the foundations of freedom of speech and democracy.

Apart from violence against journalists, there are numerous other violations of journalists' rights in the Republic of Armenia, which also impede the development of freedom of speech in the country.

3.2. Threats against Journalists

Included among violations of journalists' rights are also ***various threats against journalists***, which, similar to incidents of violence, are extremely dangerous. In recent years, the most striking threats against journalists include:

On 22 November 2004, at about 20.40, the car Vaz 2121 Niva belonging to the newspaper *Haykakan Zhamanak* parked at the entrance to its editorial office was set on fire and burned out. On 2 December, a criminal case was instituted on the basis of Article 185 of the RA Criminal Code (Intentional Damage to and Destruction of Property). On 8 February, the criminal case was discontinued on the pretext that the perpetrator of the crime was not known.

In early morning of 1 April 2005, the Niva car belonging to Samvel Aleksanyan, editor-in-chief of the newspaper *Syunyats Yerkir* was set on fire in Goris. On 1 June, the prosecutor's office of Syunik region discontinued the investigation of the case of arson of Samvel Alexanyan's car.

On the night of 15 May 2006, unknown persons stoned the Volkswagen belonging to Narine Avetisyan, manager of the television company *Lori* and broke its glasses.

A criminal case was instituted on the incident, which was suspended in two month's time for failure to detect the culpable.

On 8 February 2007, at about 20.15 the Nissan Xterra belonging to Ara Saghatelyan, chief of the editorial newspaper *Im Iravunq* and *Panorama.am* news site, president of the Armenian PR Association was set on fire. A bottle filled with petrol was found on the car and two more empty bottles were found in the vicinity of the car. A criminal case was instituted on the fact of crime but the culpable were not found.

In early morning of 13 December 2007, at about 4.30 there was an explosion at the entrance to the editorial office of the newspaper *Chorrord Ishkhanutyun*. The explosion damaged the door of the office. A criminal case was instituted on the basis of Article 185 of the RA Criminal Code (Intentional Destruction of or Damage to Property) but the culpable were not identified.

In the early morning of 19 January 2008, at about 5.00, there was an attempt to set fire on the Gyumri Journalists' *Asparez* Club. The criminals had placed a cloth wetted by petrol on the windowsill and set fire to it. Part of the window was burnt and the glass cracked. The Club did not report the incident to the police being confident that the police would be unable to detect the culpable and hold them liable.

In the early morning of 21 March 2008, at about 01.05, the Opel-Vectra beloning to Nadezhda Hakobyan, President of the Gyumri Journalists' *Asparez* Club was set on fire in Gyumri. On 5 September, the the Gyumri Journalists' *Asparez* Club made a statement maintaining that the Shirak regional invetigatory unit of the General Invetsigative Department of the RA Police was incapable of detecting the crime committed against the journalistic organization.

Threats also have adverse effect on the effective performance of journalists' duties and undermine the development of freedom of speech in the country.

3.3. Other Violations of Journalists' Rights

In the course of the recent years, *other violations* of journalists' rights have occurred in the Republic of Armenia, as a result of which many persons were deprived of their right to receive information. Some of them are dealt with below.

On 19 February 2003, on the day of presidential elections a number of violations of journalists' rights were registered. In the Yerevan polling station 122, unknown people obstructed the staff members of *Shant* TV in discharging their professional responsibilities when they attempted to film how certain persons dropped several ballots into a ballot-box. These persons seized the film of the TV company's staff. In the same polling station there was an assault on Gohar Veziryan, reporter of the newspaper *Ayzhm* who had discovered ticked ballots and reported it to the proxy of an opposition candidate. Rights of other journalists were violated in numerous other polling stations: the staff of A1+ was among those especially hurt since they were invited out of the polling stations and prevented from collecting information.

On 4 May 2004, the officers of the road traffic police of Kotayk region obstructed the staff of the television company *Aravot* TV in discharging their official duties when on a day preceding a rally in the capital they departed for Yerevan-Sevan highway to check whether the complaints of journalists that law enforcement bodies limited the people's right to free movement were true. According to the newspaper *Aravot*, at the time of shooting the officers of the road traffic police stopped the journalists' car and, jointly with their chief, forced the journalists to handover the film and also remove the filmed shots.

On 5 April 2004, the reporter of the newspaper *Haykakan Zhamanak*, Hayk Gevorgyan was arrested when filming the process of closing the road by the law enforcement bodies on Ashtarak highway (this was related to an opposition rally taking

place in Yerevan). In the journalist's words, he had to undergo a brainwashing of educational nature in the police station.

In the afternoon of 19 February 2008, not far from a Yerevan polling station an argument spiced with swearing started between a group of young persons and the cameraman of the television company A1+, Hovsep Hovsepyan. These young people tried to seize the camera. At the end, they seized and spoilt the film.

On 1 and 2 March 2008, several violations of journalists' rights were registered when they were obstructed in the course of filming. In many cases, the cameras and films were seized from journalists and performance of their official duties was obstructed.

On 16 May 2008, at about 16.00, the driver of the service car of Gyumri tax inspectorate obstructed Armine Vardanyan, reporter of the Gyumri television company GALA and the cameraman Artyom Adamyan in the course of discharging their professional responsibilities. The driver gave two blows to the camera of the cameraman shooting in front of the tax inspectorate building and later expelled the reporter of the television company from the lobby. The staff of GALA were preparing a material on the dismissal of the head of Gyumri tax inspectorate. Journalists addressed the police of Gyumri which started an inquiry. However, in this case too, nobody was punished.

On 1 August 2008, Gagik Hovakimyan, staff member of the newspaper *Haykakan Zhamanak* was forcefully brought to a police station and held there for about an hour and a half. On a day of a rally in Yerevan, Gagik Hovakimyan drove Anna Zakharyan, reporter of the above newspaper to Ashtarak to make a reportage on the situation of the town (particularly, the interruptions of the work of transport). Despite the demands of the newspaper staff, the police officers who used illegal violence on the journalist were not held liable.

On 21 December 2008, the survey squad of the news programme *Haylur* of the first channel of Armenian Public Television was not allowed to report the congress of the Armenian National Congress. Anna Vardanyan from *Haylur* reported that the person in charge of public relations of the Congress requested that the journalists of the Public Television vacated the building where the congress was held. In the journalist's words, this obstacle was explained by the attitude of the Armenian National Congress towards the current authorities. Levon Zourabyan, Co-ordinator of the Congress explained that this act was a response to the failure by the authorities to provide a hall for the congress.

On 6 August 2009, the police obstructed the work of the cameraman and journalist of *Shant* TV when they were shooting a protest act by the tradesmen of the Gyumri market known as *Lachin Corridor*. The reportage on this incident was shown during the news programme *Horizon* of the Yerevan studio of the television company, which showed how the head of Gyumri police closed the lens of the television camera by his palm and then seized the camera from the cameraman.

3.4. Conclusions on the Nature, Motives and Causes of Violations of Journalists' Rights

The overall analysis of the presented incidents permits us to make the following conclusions on the nature, motives and causes of the violations of journalists' rights.

1. Limitations of journalists' freedom of expression in many cases have a political context. This is testified by the fact that the majority of violations are registered in the course of pre-election campaignc or on voting days by this or that candidate or his representatives. This shows that there is still a lack of a culture of reasonable political struggle in the country and very often, in order

to obtain or not to lose votes, various candidates resort to extreme measures.

2. A distinct motive for freedom of expression limitations is the hostility and the desire to take revenge on a reporter, which very often is not even connected with political processes. As we see from many examples shown, in a number of cases there is a conflict between reporters and public officials.
3. Many limitations on journalists' rights have never been detected either for objective or subjective reasons and the culpable were not held liable. We believe that consistent steps to eliminate the atmosphere of impunity in the RA will improve not only the freedom of speech situation and enhance the level of protection of journalists' rights but will also contribute to reduced corruption, human rights protection and increased efficiency and effectiveness of the activities of state bodies.
4. Another cause of violations of journalists' rights is the low level of tolerance in the country. Furthermore, the lack of tolerance is observed about journalists, public officials, law enforcement, as well as other representatives of the society. The problem is the fact that very often journalists transgress the boundaries of reason, intrude upon the private life of people, disseminate untrue information about them. However, it is also true that in many cases certain people uduly infringe upon journalists' constitutional rights because the latter provide objective and truthful information. The inculcation of tolerance among the members of the society, in our belief, is the very weapon with which the process of improvement of the freedom of speech situation may start. Had there been tolerance, many of

the regrettable incidents reflected in this report would have had a positive outcome.

5. Limitations on journalists rights in the RA have many other causes, including, for example, the relatively low level of journalists' legal and financial safeguards, problems related to effective functioning of the law enforcement bodies, misconceptions many people have about the institute of journalism and its mission, lack of willinginess on the part of certain members of the society to assist and support journalists, etc. These problems require systemic solutions.
6. There are also "peaceful' periods in the country when the number of incidents of limitations of journalists' rights goes down considerably (for example, the second half of 2009). Although it is obvious that the given "peaceful' period has to do with the political tranquility in the country, it, nevertheless, gives us hope that in the course of time along with stabilization of the political situation there will be less violations of journalists' rights in the country.

In summary of the aforementioned, it can be concluded that the causes of violations of journalists' rights are numerous, and in order to eliminate them it is necessary to have political will, to wage a consistent fight against the violations and their causes, to put in place legislative safeguards for journalists' rights and to display mutual tolerance.

4. Analysis of the Cases of Freedom of Speech Restrictions in the Press

The press, as one of oldest media of transmission of information has maintained its actuality, which is conditioned by the unique role and significance of the press among the mass media.

For a long time, the press in Armenia was subjected to censorship, and readers were not provided with information that reflected the reality. At present, the press is free, censorship is excluded, but there the problem of indirect pressure on the press is yet to be solved.

Restrictions on freedom of speech in the press may be manifested in different forms considering the complexity of the process of making the press available to the public. In particular, when analyzing the cases of restrictions on freedom of speech in the press in the last ten-fifteen years, it is possible to give the general contours of restrictions of freedom of speech in the press:

1.In the first place, the restrictions are manifsted in direct violence or threats of violence against certain members of relevant newspapers, as well as other restrictions on their rights, which have a direct impact on their professional activities. This problem has been addressed in the relevant sections of this report.

2.The next direction of restrictions on the functioning of the press is the creation of artificial obstacles by companies that provide services to newspapers. This phenomenon was especially widespread at the end of 90s when printing companies that occupied a monopolous position refused to publish this or that newspaper, mainly invoking the debts of the founding organizations.

Monopolies may have an adverse effect not only on the development of economy, the level of protection of consumer interests but also pose a great danger to the exercise of freedom of speech in the press. It is positive that measures have been taken to eliminate the monopolies of companies publishing newspapers, which greatly improved the situation of newspapers and freedom of speech. However, the cases of restrictions have not been fully eliminated. It should also be noted that at the moment online newspapers are also developing at a high speed, and the majority of printed newspapers also have their online versions, which

greatly enhances the effectiveness of the newspaper activity and reduces their dependence on various economic entities.

3.The next direction of restrictions on the functioning of the press has a very different manifestation. It may happen so that all the copies of a newspaper issue are bought by the same person and readers are deprived of the possibility to familiarize themselves with a particular issue of a newspaper. This is mainly done by those about who there is damaging information in the issue in question. In recent years, there have been numerous such cases in Armenia.

In particular, **on 31 October 2002**, the regular issue of the newspaper *Aravot* did not reach its readers. All the copies of the newspaper were handed over to the *Haymamul* but they failed to reach the newsstands.

On 18 March 2003, the readers were not able to familiarize themselves with the daily issue of the printed newspaper of the Armenian Communist Party, *The Communist of Armenia*. All the copies of the paper were collected from the printing house by unkown persons.

The newspaper *Aravot* mentions that **on 17 October 2005**, obstacles were made for the dissemination of the current issue of the newspaper in Gyumri by means of seizing *Aravot* from newsstands, visiting copying posts and prohibiting their owners to receive commissions from people who had obtained copies of the newspaper.

On 11 September 2007, all the copies of the daily *Zhamanak Yerevan* were bought. The newspaper informed about this incident in its subsequent copy.

On 26 and 28 September 2007, the regular issue of the newspaper *Chorrord Ishkhanutyun* did not reach the inhabitants of Artashat and adjacent villages.

On 27 March 2008, the newspaper Zhamanak Yerevan reported that according to its data, the day before, unknown

persons collected the March 26 issue of the newspapers *Zhamanak Yerevan* and *Chorrord Ishkhanutyun* from newsstands.

On 21 August 2009, the newspaper *Haykakan Zhamanak* reported that on 20 August 2009, unknown persons had bought all the copies of the newspaper *Haykakan Zhamanak* from numerous newsstands in Kentron and Erebouni neighbourhoods.

Although this phenomenon has no impact on the financial activities of newspapers, it, nevertheless, causes huge damage to freedom of speech. Each public official needs to understand that by occupying a high position s/he authomatically causes interest in his/her person. Naturally, his activities become a matter of public discussion spiced with both praise and criticism. However, the majority of RA officials are not yet ready to tolerate critical opinion of their words and deeds.

4.Although censorship is prohibited in the RA many mass media believe that in the period of 1-20 March 2008 many of them were directly subjected to censorship.

On 1 March 2008, a state of emergency for twenty days was introduced in Yerevan. The President of the Republic's Decree on the State of Emergency, in particular, envisioned that publications on state and domestic issues by the mass media might be issued exclusively in the framework of official information from state bodies. On 13 March, the Decree was amended. In particular, the above sub-paragraph on the activities of the mass media was reworded in the following terms: "It is prohibited for the mass media to publish or otherwise disseminate outright untrue or destabilizing information regarding state and domestic issues or calls for participation in unnotified (unlawful) events, as well as to publish or disseminate such information or calls in other ways and forms.' These amendments became effective on 14 March 2008.

In actual fact, these restrictions grew into censorship, which is not only prohibited by the RA legislation but also by the March

1 Decree of the President of the Republic. Under the circumstances of a state of emergency, a number of newspapers, including *Aravot, Harkakan Zhamanak, Zhamanak Yerevan, Hraparak, Taregir, Pakagits, Chorrord Ishkhanutyun, Hayk* and *168 zham* stopped being issued. According to journalists, bans on publication were imposed by the representatives of the RA National Security Service.

The right to freedom of speech is not unlimited and, if necessary, it may be restricted when there are threats to the state or society, which is fully justified in everybody's interests. However, any restriction of freedom of speech must conform with the Constitution and other legal acts, be justified, grounded and enforceable.

5.When examining the press situation in the Republic of Armenia, note should also be taken of another phenomenon, which is also important for improved freedom of speech situation of the country. Recently, there has been an increase of civil cases submitted to the RA courts against the authors of various articles in the press, which testifies to the fact that freedom of speech is not unlimited and may not have adverse effects on the honour, dignity, business reputation of other people. Therefore, journalists must try to impart accurate information to readers and never try to assert themselves to the detriment of other people's (and especially public officials') honour and dignity.

6.The phenomenon whereby newspapers bring actions against the state bodies that fail (contrary to the law) to provide the requested information should be evaluated as a progressive one. This kind of court cases are numerous and their analysis shows that, normally, the courts obligate the pertinent state and local self-government bodies to provide the requested information.

In sum, it can be registered that despite the great number of violations newspapers continue to be one of the freest mass media

and the obstructions to their activities are easier to overcome when compared with television companies. Apart from this, newspapers publish information of any type and content, which may sometimes surpass the limits of whatever is permissible. Therefore, we may conclude that despite the great number of restrictions on freedom of speech in the press, the latter, continues to remain as one of the relatively free mass media in the country.

5. The Overall Freedom of Speech Situation in the Area of Television and Radio

Both television and radio are the mass media that by virtue of their wide reach have a great impact on the moral and psychological state of the society and are essential in forming opinion. The absence of diversified and objective information on television and radio may cause serious damage to both freedom of speech and the consolidation of the political system and even obstruct any positive developments in the country. Of special importance is the existence of free and independent television and radio companies which, being unhindred by pressure of any kind, succeed in providing impartial and objective information to members of the public and shield them from misinformation and the information vacuum. The role of public authorities is great in the development of television and radio. Clear legal regulation and policy may greatly contribute to improved protection of freedom of speech.

The analysis of broadcast media in the RA shows that there are a number of phenomena in the area that are contrary to the principles of a democratic rule of law country, including a case when a television company was deprived of the air.

This conclusion stems from the study of the area of television and radio, including the numerous violations recorded in this area. The majority of the cases below are the outcome of

the studies conducted by Yerevan Press Club and the Committee to Protect Freedom of Speech.

5.1. The Current Situation of Television and Radio

According to the data publicized by the NTRC, at the moment there are 75 television companies in Armenia functioning on the basis of licences granted by the NTRC, of which 4 operate in Yerevan and, at the same time, in one or more marzes, while 23, in Yerevan only.

There are 20 radio companies in the RA, of which 3 operate in Yerevan and in one or more marzes while 14, in the territory of Yerevan only.

The Public Television Company, *Shirak* public television and radio company, the Armenian branch of the interstate television and radio company *Mir* functioning on the basis of an interstate treaty, *Kultura, RTR-Planeta* and the First Russian TV channel.

The last time the NTRC announced a tender for a free television channel was on 19 November 2003, and on 27 December 2005 – in the area of radio.

This is conditioned by the provision laid down in Article 59 of the RA Law on Television and Radio, according to which no tenders for licences will be announced until 20 July 2010. The television and radio companies whose licences expire by 21 January 2011, may submit a request for extension of the licence to the NTRC. The term of the licence will be extended for the requested period but no longer than until 21 January 2011. The laying down of this provision is accounted for by the introduction of digitalization in the RA.

On the basis of this Article, the NTRC has extended the term of broadcasting licences for 21 television and radio companies until 21 January 2011.

5.2. Restrictions on Freedom of Expression as Regards the Television Company A1+

5.2.1. In 1994, A1+ received a frequency, which had a public television licence on which it broadcast for a specified period of time. According to the representatives of the television company, in 1995, A1+ had difficulties in its relations with the state regarding its broadcasts. A1+'s public broadcasting activities were suspended in May 1995.

Meltex Ltd. was founded in 1995 as an independent broadcasting company. On 22 January 1997, *Meltex* Ltd. was granted a licence by the RA Ministry of Communication, on the basis of which the company was allowed to install a television transmitter and by means of A1+ broadcast via a decimetric channel. The licence was granted for a period of five years.

In September 1999, Meltex Ltd. founded the 24-hour network *Hamaspyur* consisting of nine licenced private regional companies. This television network was known in Armenia as one of the several independent television broadcasters. Of primary importance for the network was the dissemination and analysis of independent, well-processed news programmes. The transmissions included analyses of international and domestic news (30%), advertising (32%) and various entertainment programmes. In those years A1+ was the only television programme that was on the air 24-hours a day.

In 2000-2001, the legislation regulating the area of television and radio was amended. The RA Law on Television and Radio adopted in October 2000 created a new body – the NTRC, which was granted the function of licencing and overseeing the activities of private television and radio companies. The RA Law on Television and Radio also introduced a new licencing procedure, according to which a broadcasting licence was to be granted through a tender procedure conducted by the NTRC considering the list of the available channels.

In 2001, all of the existing licences were registered temporarily by the NTRC until the announcement of the relevant tenders.

On 3 September 2001, the NTRC granted a new licence to *Meltex* Ltd. for broadcasting via channel 37 with a deadline set for 22 January 2002.

On 28 December, the RA Law on the Rules of Procedure of the National Television and Radio Commission was adopted (hereinafter: the NTRC Rules of Procedure). On 24 January 2002, the NTRC adopted its Decision No.4 approving the Procedure for Licencing Tenders for Television and Radio Broadcasting (hereinafter: Tender Procedure).

On 19 February 2002, the NTRC announced a tender for various broadcast frequencies, including channel 37. *Meltex* Ltd. and two other companies, *Sharm* Ltd and *Dofin* TV submitted bids for channel 37. Despite the fact that previously Sharm Ltd. had never operated in the area of television broadcasting, that its work was focused mainly on organizing entertainment programmes for youth and students and that at the time of bidding none of its staff members had professional journalistic background, buildings, equipment, financial or technical infrastructure for starting broadcasting, on 2 April 2002, the NTRC summed up the outcomes of the tender and as a result of credit voting declared *Sharm* Ltd. as the winner of the tender for channel 37. On 3 April 2002, the television channel A1+ stopped broadcasting.

Due to the lack of broadcasting experience and sufficient resources *Sharm* Ltd. never started broadcasting and nine months later sold the control packet of shares to another legal person.

In 2002-2003, *Meltex* Ltd. took part in a number of tenders announced by the NTRC for other channels and was never declared a winner. All decisions of the NTRC literally stated that the relevant television companies were declared winners of

tenders and that they were consequently granted licences for broadcasting television programmes.

Meltex Ltd. repeatedly applied to the Chairman of the NTRC asking him to give reasons for refusals but was informed that the NTRC adopted a decision only on declaring an organization a winner and granting or refusing to grant a licence for broadcasting television companies.

For lack of clear tender criteria the tenders were largely of an artificial nature. Very often long before a tender the wide circles of the society knew very well who the winning organizations were going to be.

Meltex Ltd. consistently appealed against the decisions and acts of the NTRC related to tenders by demanding that the NTRC informed in writing and within a ten-day period following the adoption of the relevant decisions of the reasons for refusal to grant a licence.

On 21 and 23 March 2004, the RA Economic Court dismissed *Meltex* Ltd's claims as ungrounded. *Meltex* Ltd. submitted cassation appleals on the ground of violations of the substantive law but the RA Cassation Court dismissed the appeals by literally repeating the findings of the RA Economic Court.

On 27 August 2004, *Meltex* Ltd. submitted an application to the European Court of Human Rights against the Republic of Armenia on the basis of Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention).

On 18 June 2008, the European Court of Human Rights issued a judgment in the case of *Meltex Ltd and Mesrop Movsesyan v Armenia*.

The European Court of Human Rights found that there had been a violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court acknowledged that *Meltex* Ltd's requests (bids)

for broadcasting licences for all seven channels (25th decimetric, 31st, 39th and 51th decimetric, 3rd metric and 63rd and 56th decimetric) had actually been refused by the NTRC and that these refusals constituted an interference with Meltex Ltd's freedom to impart information and ideas. The European Court of Human Rights also found that this freedom was violated due to the fact that the NTRC's decisions were not duly justified.

The European Court also noted that the guidelines adopted by the Committee of Ministers of the Council of Europe in the area of broadcasting require open and transparent application of the norms regulating the licencing procedure and recommend, in particular, that all decisions made by regulated bodies are duly justified. The Court took note of the Resolution of the Parliamentary Assembly of the Council of Europe of 27 January 2004 related to Armenia, which mentioned that due to vagueness[1] of the existing legislation the NTRC had essentially been enjoying absolutely discretionary powers. The European Court found that the licencing procedure whereby a licencing authoriy does not provide reasons for its decisions does not ensure adequate protection from arbitrary intereference by public authorities with the fundamental right to freedom of expression.

Finally, the European Court decided that the Republic of Armenia had to pay 20 000 Euro to Meltex Ltd in respect of pecuniary damages and 10 000 Euro in respect of costs and expenses. The judgment of the European Court entered into force on 17 September 2008.

On 17 December 2008, *Meltex* Ltd. appealed to the RA Cassation Court for the review of the judgments of the Civil and Economic Chamber of the RA Cassation Court dated 27 February 2007 and 23 April 2007 on the ground of new circumstances. *Meltex* Ltd. demanded that the fact of violation of the right to

[1] See the previous chapter of the report.

freedom to impart information and ideas as guaranteed by Article 10 of the Convention be recognized, that the NTRC's decisions on all 7 channels be cancelled and that the previous situation be restored with the NTRC announcing the relevant tenders anew.

On 19 February 2009, the RA Cassation Court by two of its judgments left the challenged judicial acts in legal force and dismissed *Meltex* Ltd's appeals. The reasoning of these judgment was that the judgment of the European Court on this case, apart from the obligation to pay damages, acknowledged only the impermissibility of unjustified decisions by the NTRC. Consequently, the claims of the appellant to the effect that a decision declaring another company as a winner be annulled, declaring *Meltex* Ltd as a winner instead and granting the latter a licence does not stem from the logic of the European Court's judgment.

The Cassation Court *inter alia* applied to *Meltex* Ltd. Article 204^{28} of the RA Civil Procedure Code, according to which"

"As a result of reviewing a judicial act on the basis of new circumstances, the court is competent to:

1. Leave the previous judicial act in force without granting it;
2. Change the judicial act in whole or in part;
3. Discontinue the case in whole or in part.'

Of importance is the fact that the provision applied to *Meltex* Ltd along with a number of articles had been recognized unconstitutional and annulled by the Decision DCC-758 of the RA Constitutional Court. In other words, the Cassation Court applied a norm, which had been recognized as unconstitutional and of no legal force.

On 29 August 2009, *Meltex* Ltd. applied to the RA Constitutional Court demanding that Article 204^{28} of the RA Civil Procedure Code, which violates the human right to an effective judicial remedy as guaranteed by Articles 18 and 19 of the RA Constitution be declared unconstitutional.

On 23 February 2010, the RA Constitutional Court decided to discontinue the proceedings for the mentioned case, inasmuch as Article 204[28] of the RA Civil procedure Code had already been declared unconstitutional by the Decision DCC-758 of the RA Constitutional Court but had not been approximated with the RA Constitution. The RA Constitutional Court found that where the scope of the case was concerned, the right of the interested persons to apply to the competent court must not be declared exhausted.

When summing up the disputes related to the deprivation of A1+ from the air and challenging this matter in courts, it should be noted that it was found that there was arbitrariness in the dealings of the NTRC and partiality and one-sidedness in the dealings of the courts. The pluralism in the air was seriously damaged with the absence of A1+.

5.2.2. We should also touch upon other important events that are a source of essential information on consistent failure to allow A1+ on the air.

On 14 February 2005, the NTRC summed up the results of tenders for licencing of television and radio broadcasting of 16 and 17 September 2004. Of special interest were the tenders for the two frequencies in Yerevan 100,6 MHz and 101,1 MHz. Included among the relevant candidates were also MS Explorer Ltd. whose founded were A1+ and the Centre for Collaboration for Democracy. MS Explorer lost as a result of the NTRC's voting.

On 25 May 2006, the NTRC summed up the results of tenders for licencing of television and radio broadcasting of 27 December 2005 for the frequencies of 90,3 MHz and 90,7 MHz. Included among the candidates was also *Meltex* Ltd. The latter lost as a result of the NTRC's voting, which means that for the twelfth time in a row the NTRC did not vote for A1+.

5.3. Analysis of the Obstacles to the Activities of Radio Liberty

At present, Radio Liberty is regarded as a company that provides the most objective and pluralistic information among the broadcast media.

In addition to radio programmes, the radio company also makes television programmes, which are broadcast by different television companies.

Since 2004 various television companies started cancelling the contracts for airing the television programmes made by Radio Liberty.

On 15 October 2004, Radio Liberty issued a press release on the removal of a Liberty programme made by the Armenian service of Radio Liberty from the channel *Kentron*.

On 21 October, the management of the television company *Kentron* announced that the decision on removal of Liberty is connected purely with commercial causes.

On 27 June 2007, draft laws on amending the RA Law on Television and Radio and the RA Law on State Due were submitted to the extraordinary sitting of the RA National Assembly. The first of these drafts prohibited the operations of other television companies in the public television and radio companies, while the draft on Making Amendments and Supplements to the RA Law on State Due states that Armenian television and radio companies have to pay a state due in the amount of 70 000 AMD for each series of programmes edited by national or foreign mass media.

The mass media and experts believed that the purpose of the drafts was to prohibit the re-broadcast of the Armenian service of Radio Free Europe/Radio Liberty by the Public Radio done on a contractual basis.

On 3 July, the RA NA voted on the draft laws on Amending the RA Law on Television and Radio and on Making

Supplements to the RA Law on State Due but they were not enacted.

On 6 July the Public Television and Radio Council decided to terminate the broadcast of domestic and foreign programmes on the Public Television and Radio Company starting from August 9.

Starting from 1 September, the broadcast of Liberty stopped on the Armenian Public Radio. Since 15 August the progammes have been broadcast by ArRadioIntercontinental on the basis of a contract with the latter. The director of the Armenian service of Radio Liberty was concerned that the change of the broadcasting radio company would considerably reduce the audience of Liberty since ArRadioIntercontinental only had 23 radio transmitters while the Public Radio of Armenia – 80.

In fact, the Armenian service of Radio Liberty, being a medium offering pluralistic and diverse information, had certain difficulties while exercising its right to freedom of speech.

5.4. Analysis of a Number of Other Memorable Cases Regarding Freedom of Speech in the Area of Television and Radio

On 23 February 2003, the television company Shant removed the programme series *Ditak* made by the organization Internews from the air. *Ditak* had been on the air since 2001 but on the above day it did not go on the air for the first time. On that day the topic of the programme was the violations occurred during the presidential elections of 19 February 2003, particularly as regards vote count. The video materials for the programmes were prepared by the journalists of A1+.

On 9 April 2004, the broadcast of the Russian television company *NTV* was terminated in Armenia. According to the statement of the company *Paradiz*, the termination of the broadcast of the television company had technical causes related

to the disorder of the television transmitter. However, many people in Armenia believed that the technical disorder was not accidental but had to do with the fact that the *NTV* regularly covered the rallies taking place in Armenia.

On 14 June, the NTRC decided to provide the 23 frequency by which the television channel *NTV* had broadcast to the RA Ministry of Transport and Communication with a view to re-broadcasting the Russian television channel *Kultura*. On 11 November 2005, the director of Radio *Hay* announced about their complaint against the Republican Television Broadcasting Centre (RTBC). The latter had asked for payment for a number of services in an ungrounded manner. The argument with the RTBC started when in February 2005 Radio *Hay* was declared a winner in the tender for licencing of the broadcast of the 20FM frequency package announced by the NTRC and in order to grant the right to use these radio stations the RTBC asked for 26 million AMD from the radio company. However, according to Radio *Hay*, in conformity with Article 48 and 53 of the RA Law on Television and Radio, the RTBC was not entitled to ask for any payment.

On 22 November 2006, a discussion on the draft on introducing digital television and radio in Armenia took place in Yerevan. The event was organized through the joint efforts of the OSCE Office in Yerevan, the OSCE Representative on Freedom of the Media and the Open Society Institute with the participation of the RA Ministry of Transport and Communication. The draft was elaborated upon the assignment of the RA Government. According to the experts, the operation of the digital system would in general be a progressive step for Armenia. There were also opinions on the essential shortcomings and gaps of the digital system.

In particular, the draft envisioned to terminate the granting of broadcast licences starting from January 2007. Due to incomplete legal regulation a situation would emerge where the functioning

television channels would have to terminate their activities while the digitalization was yet to be introduced. Apart from that, the concept of "social package' was put to motion. In other words, the most vulnerable layers of population were to receive grants to acquire the minimum number of public and private television channels. It was up to the RA Government to determine the types of private companies to be included in the package. According to many people, this was a breach of the principle of free broadcasting since it should be up to the regulatory body to decide on such issues and not the Government. On 19 January 2007, the RA President signed an order on announcing a competition to fill in the vacancy for a member of the Public Television and Radio Council (PTRC) since the term of office of the PTRC's Chairman Alexan Harutyunyan had expired. The announcement stated that the office of the PTRC member may not be filled in by managers of public and private television and radio companies, as well as by persons who had contractual relations with television and radio companies. There was a wide belief that this would not permit professional cadres to participate in the competition, which could be regarded as discrimination.

The results of the competition were summed up by the competition committee on 31 January 2007. Only one person had applied for the competition – Alexan Harutyunyan. Alexan Harutyunyan was declared as the winner of the competition and by the Decree of the President of the Republic was appointed a member of the PTRC for a 6-year period, following which he was re-elected as Chairman of the Public Television and Radio Council.

In September 2008, amendments were made to the RA Law on Television and Radio, which envisioned that no tenders for licencing of television and radio broadcasting might be announced until 20 July 2010. The relevant draft law was elaborated by the RA Government. The draft was included in the agenda of 8

September of the RA NA (furthermore, only that document was made available to the public) and was adopted by the parliament on 10 September by a summary procedure. The public authorities justified the need for this amendment to the existing law by the preparations to digital switchover in the broadcasting sphere of Armenia. As regards the journalistic organizations, they were of the opinion that the Government's aim was to maintain the easily managed situation of the broadcasting sphere.

On 15 February 2010, the NTRC decided to approve the Standards on Determining Television and Radio Programmes of Erotic Nature, Films Containing Horror and Explicit Violence, as well as Programmes with a Potential Negative Impact on the Health, Intellectual and Physical Education and Upbringing of Minors.

On 9 February, the Chairman of the NTRC informed the journalists that rathar than prohibit or permit the transmission of this or that programme, they intended to set standards on programmes which could be aired by day and night and which – after midnight.

The approved standards give descriptions of programmes of erotic nature, films containing horror and explicit violence, programmes with a potential negative impact on the health, intellectual and physical education of minors. The document states that programmes transmitted between 6.00 and 24.00 may not contain erotic episodes and scenes of sexual acts. Following the adoption of the document many programmes had to introduce changes in their broadcasts in order not to be subjected to administrative liability by the NTRC.

5.5. Summary of the Situation in the Sphere of Television and Radio

In the light of the analysis of the events that occurred in the sphere of television and radio in the RA in the last 15 years, the following conclusions may be made:

1. There are a number of problems in the area of freedom of speech in the Republic of Armenia. In particular, television and radio companies imparting diverse information encounter a number of obstacles in their activities, which have adverse effects on the development of freedom of speech. This is also testified by the annual reports of the international organizations monitoring the situation in Armenia, which are of a negative opinion on the current freedom of speech situation in the RA, especially in the sphere of television and radio.

2. These cases demonstrate that there is also another problem, which has a direct impact on the freedom of speech situation in the country. At present, the perceptions of the NTRC's independence are not unequivocal. As regards this issue, it should be noted that the situation became clearer by the European Court of Human Rights in the case of *Meltex* Ltd., which acknowledged the fact of adoption of ungrounded decisions by the RA public authorities and the existence of restrictions on freedom of speech.

3. The NTRC is quite passive in taking steps to fill the gap of quality television and radio programmes. This has become especially evident in the last years when the air is filled with incomprehensive and unacceptable programmes, films, soap operas, etc. The recent standards adopted by the NTRC in this area should be regarded as a step forward. However, many more steps need to be taken in this area.

4. There are numerous violations by television companies of the relevant legislation (especially the RA Law on Advertising), which is testified by a number of studies of various organization.

However, almost no television company has been held liable for this in recent years.

Below are a few directions for improving freedom of speech situation in television and radio whose consistent implementation would contribute to better exercise of the right to freedom of speech:

- Enhanced role of the mass media in the public life of the country,
- Co-operation between various mass media;
- Technical development;
- Improved policy on advertising.

CONCLUSION

To sum up the above findings, it should be noted that there are a number of problems in the area of freedom of speech in the Republic of Armenia and that there is a need to speed up the reform process. In particular, journalists are subjected to violence for performing their professional duties and the culpable are not normally held liable. Also, there are many other restrictions on people's right to receive information, etc. Under the present circumstances the freedom of speech situation raises serious concerns and requires urgent measures to fight against its adverse effects.

The measures to be taken for the improvement of freedom of speech situation may be classified into two groups – short-term and long-term. Although short-term measures will not fully solve the problem, they will, to the extent possible, improve the freedom of speech situation. However, long-term measures are more important, since they, although slowly, will radically change the current situation and serve as a basis for the future freedom of speech system.

1. In the context of short-term measures, it is necessary to draft a package of legislative amendments in the area of freedom

of speech, in particular, news reporting. This will considerably reduce the number of provisions impeding the development of freedom of speech and, on the contrary, envision additional guarantees for the development of the sphere. However, considering the practice of such legislative amendments in the Republic of Armenia, there is a need to lay down a number of mandatory requirements related to the process of legislative amendments. In the past, not only did legislative amendments fail to improve the freedom of speech situation but they also introduced questionable and dangerous norms in various legal acts, which had adverse effects on the development of freedom of speech. Therefore, as regards this problem, it is important to secure the participation of broad layers of the society in discussions of draft legislative amendments as well as to have representatives of the mass media and NGOs as participants of the drafting process. This would ensure pluralism in the discussion of any draft and reduce the chances of adoption and, later, application of undesirable norms. Where legislative amendments are concerned, of importance is also the awareness of the concrete objectives pursued by these amendments. Very often, we witness situations when certain amendments pursue narrow private goals or, in extreme cases, are made for their own sake. Any amendment must, first and foremost, aim at the public interests and the public good.

The legislative amendments should aim at the solution of the problems in the following main directions:

Clear definition and specification of undue restrictions on freedom of speech. At present such guarantees are in place. However, they are not in the acts where they were supposed to be. Apart from this, the grounds for restrictions on freedom of speech are not quite clear, which has been proved in practice when freedom of speech has been unduly restricted. Of importance is

also the question of establishing clear mechanisms of detecting freedom of speech violations and helding the culpable liable.

Change of the procedure for the formation and activities of the National Television and Radio Commission and the Public Television and Radio Council. These bodies should have as members people who are specialists in the sphere and are independent so that they are able to perform their functions in an impartial and efficient manner. Apart from this, these bodies should have the necessary competence to exercise due oversight over the sphere.

Improvement of the sub-legislative basis in the area of freedom of speech. At present, there is a great need for the adoption of numerous sub-legislative acts, which will envisage procedural norms and greatly facilitate the process of receiving information by the mass media, citizens and other organizations.

Legislative intiatives in the Republic of Armenia must not be taken in isolation and without regard being paid to the pertinent legal acts of other countries. Since there are countries, which have registered considerable achievements in the area of freedom of speech, it is desirable that the Republic of Armenia pays special attention to international best practices in the area of freedom of speech. Moreover, of considerable significance is the correct assessment of the principles adopted by the states that are the torch-bearers in the area of freedom of speech and their application in the Republic of Armenia in accordance with local pecularities.

In addition to these directions, there are also many other problems that have been reflected in this report.

2. Legislative amendments are a necessary but insufficient pre-condition for fighting the negative phenomena in the area of freedom of speech. Furthermore, under current circumstances, no matter how perfect any legislation is, in certain cases restrictions on freedom of speech will continue. This is conditioned by the

political, socio-economic, moral-psychological and other phenomena in the country. Therefore, it is necessary to wage a co-ordinated fight against them. In particular, freedom of speech will be improved if the legal understanding of the society is improved, if there is more tolerance and greater effort in the fight against negative phenomena. These are also regarded as long-term measures to improve freedom of speech, which require consistent and targeted efforts by the state and the stakeholder organizations.

Therefore, the improvement of freedom of speech has to occur in parallel with the solution of other socio-political problems inasmuch as, according to the key message of this report, freedom of speech is closely connected with various other phenomena and its development is impossible in isolation from the general system.

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