



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**

**LEGAL ANALYSIS OF THE LAW OF THE REPUBLIC OF ARMENIA “ON
AUDIOVISUAL MEDIA” (ADOPTED ON 16 JULY 2020)**

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Table of contents

Executive summary3

Main recommendations5

Introduction6

Part I. International legal standards on Freedom of Expression and Freedom of Information7

General standards7

Standards with regards to audiovisual media services.....8

Part II. Overview of the legal reform10

Content and scope of the legislation10

Analysis of the provisions of the in light of applicable international standards10

Executive summary

This Analysis examines the Law of the Republic of Armenia “On Audiovisual Media”, adopted on 16 July 2020.

The law apparently covers the activities of traditional broadcasters (radio and television), and the provision of non-linear audiovisual services. The law also appears to cover main regulatory issues related to the status and obligations of telecommunications service providers, included in the law under the notion of network operators. The territorial scope of the law is based on a series of parameters, including the fact that “registration and transmission of audiovisual information is within the territory of the Republic of Armenia” and the use of “an Internet connection being provided in the territory of the Republic of Armenia”. It is recommended to replace these parameters with the requirements usually recommended by regional and comparative standards, which focus on the country of origin and main establishment of the audiovisual media service providers.

The legislator embraces a very limited notion of self-regulation and does not contemplate the difference between internal and external self-regulation.

According to the law, broadcasters shall ensure “the right of a person to respond to a speech directly addressed to him or her”. This is a restriction too broad and disproportionate to the right of media and journalists to freely disseminate information. It also refers to the right of citizens to have access to important events via audiovisual media. This provision is worded in a very extensive and sometimes imprecise and confusing manner. The restriction establishing that “advertisement and entertainment programmes shall be prohibited on mourning and remembrance days declared by the State” may appear to be disproportionate in an environment where traditional media services compete with the provision audiovisual content via online platforms. The prohibition of “programmes the participants of which may, during the live programme, conditioned by the nature of the programme, perform actions prohibited by law due to an interpersonal conflict arisen as a result of dislike resulting from a long-time dispute, previously known to the Broadcaster” introduces a *pro futuro* restriction which forces the broadcaster in question to speculate about the way a still non-elaborated piece of content may finally consist of.

The law needs to clarify which broadcasters are subjected to the restrictions imposed in chapter 3. The obligation for news programmers that “the coverage of the same theme shall not exceed 25 per cent of the total airtime of the programme” is an arbitrary and unjustified restriction to the editorial freedom of service providers. Article 12 establishes restrictions for media outlets in cases of martial law and state of emergency. The law must introduce conditions and restrictions in order to prevent authorities from using airtime from broadcasters in an unnecessary and unjustified manner. The law thus must specify that such power can only be exercised to disseminate information or make announcements of fundamental importance in order to properly safeguard public safety and citizens’ basic rights. .

Article 15 sets a series of prohibitions regarding the establishment or foundation of audiovisual media outlets, excluding “heads of communities and affiliated persons thereof”, “political parties”, “foundations of political parties”, “religious organisations” and “citizens under the age of 18”. Establishing a general and broad prohibition to create any audiovisual platform is a clear, unnecessary and disproportionate restriction to the right of freedom of expression of the mentioned groups and entities. Similarly, the complete prohibition for citizens under 18 to create audiovisual media outlets represents a discrimination that is not supported or justified

under international human rights law. Article 18 contains a few “anti-monopoly guarantees’ (sic). In particular, legal or natural persons cannot be founders or participants in the national capital of more than two television stations. It also stresses that these restrictions “shall not extend to the audio programmes transmitted by the Broadcasters”. The fact that the law, without any context or explanation, limits only a very limited amount of media concentration situations focusing only on one type of transmission system raises serious doubts regarding the rationale and adequacy of such provision.

Granting just one channel to public service media seems clearly insufficient in the current context of an increased number of available digital terrestrial channels. In addition to this, and considering the different nature and missions of public service and private broadcasters, making both compete for a frequency is neither adequate nor justified.

The requirements to become a member of the Council are very broad and do not guarantee the level of expertise that is necessary in order to undertake this leadership position. The basis of the criteria and mechanisms on which candidates are selected and finally appointed need to be clearly defined and set up by law. Establishing by law the budget of a public service body on the mere basis of the previous year’s budget considered as a minimum benchmark is insufficient and almost arbitrary in order to guarantee that public service media receives adequate and sufficient funds. Therefore, the law would need to introduce the provisions that would properly establish the financial costs of providing the public service and identify the different sources of income (advertising, sponsorships, etc.) in order to calculate the need for public funding.

Articles 34 and 35 of the law establish the procedure for the nomination and election of the members of the Commission of Radio and Television. It is advisable that the law also incorporates additional provisions regarding the participation of civil society, journalists’ and similar organisations at some point in the nomination and/or appointment process. It would also be important for the law to establish that in any case the independent audiovisual regulator must count on sufficient funds in order to perform activities in an efficient, proper and independent manner.

The general authorisation process for broadcasters needs to be eliminated, inasmuch as other more specific procedures are contemplated depending on the services provided. The law needs to clearly specify the parameters or the procedure according to which the independent regulator will establish the evaluation criteria applicable to each license tender process. In cases of network operators, the requirement to obtain a license would only be justified when the distributor aims at using scarce infrastructure technologies (such as terrestrial frequencies) but not vis-à-vis other cases (e.g. cable and satellite) where in principle, and according to best practices in the European Union and the Council of Europe, a notification to the competent telecommunications authority would suffice. Rules in this latter field are in any case to be preferably included in the telecommunications (or electronic communications) legislation and put under the oversight of the telecommunications regulation authority. The law needs to clearly establish that the provision of traditional media services (broadcasting) via non-scarce technologies (satellite, cable, IP, ...) only requires a minimum intervention from the regulator via a prior notification including basic information about the provider. Same regime must apply to the provision of non-linear audiovisual services (either as an OTT service or any other possible model).

Rules regarding infractions and penalties are set, in general, in a very precise way, which is commendable in terms of legal certainty. The need to respect the principle of proportionality

is particularly taken into consideration, as penalties are not indicated in absolute figures but as percentage of yearly revenue. There is also a reasonable graduation of sanctions connected to the seriousness of the infraction, and the most severe measures are clearly reserved for very serious misdemeanours only.

Main recommendations

- It is advised to incorporate the jurisdiction criteria recommended by regional and comparative standards, focusing on the country of origin and main establishment of the audiovisual media service providers.
- It is recommended to broaden up the notion of self-regulation to incorporate the difference between internal and external self-regulation.
- It is recommended to repeal article 7, which establishes that broadcasters shall ensure “the right of a person to respond to a speech directly addressed to him or her”.
- It is recommended to amend article 8 in order to adopt a regulation on events of major importance in line with applicable European standards.
- It is recommended to transform content restrictions on mourning or remembrance days into a mission for public service media to properly commemorate such type of occasions.
- The prohibition included in article 9 paragraph 6 needs to be eliminated as it constitutes an unacceptable form of prior censorship.
- The law needs to properly clarify which broadcasters are subjected to the restrictions introduced in chapter 3.
- Restrictions imposed by article 10.7 to the content and time distribution of news programmes need to be eliminated.
- Obligations for broadcasters in times of martial law or state of emergency (article 17) need to be amended in order to respect the principles of necessity and proportionality.
- The law needs to incorporate regulations on community media in order to facilitate the exercise of the right to freedom of expression by members of groups, communities or areas of a country including foundations and associations, political organizations, religious groups, social and linguistic groups, universities, NGOs and many others. The absolute prohibition for citizens under 18 to create audiovisual entities must also be repealed.
- The law needs to amend its current “anti-monopoly” provisions in order to introduce a legal regime based on the principles of consistency, rationality, necessity and proportionality.
- The procedure established in the law to nominate and appoint members of the Council of public service media bodies needs to be amended in order to guarantee the consideration and election of truly qualified candidates on the basis of an accountable, transparent and fair procedure.
- The provisions regarding public media funding need to be amended in order to guarantee that the financial costs of providing the public service and the corresponding funding needs are sufficient.

- The procedure for the nomination and election of the Council of Radio and Television members needs to be amended in order to properly guarantee accredited knowledge and top-level professional experience, or technical, journalistic or economic experience connected to media legal and ethical matters, as well as high ethical standards.
- The law must guarantee that the regulator counts on sufficient funds in order to perform activities in an efficient, proper and independent manner.
- The legal regime regarding the licensing and authorisation of broadcasters and network operators needs to be substantially modified and replaced with a series of rules that guarantee a system based on the ideas of necessity and proportionality, thus avoiding excessive burdens and unnecessary interventions. Regimes applicable to actual audiovisual service providers versus telecommunications service providers also need to be properly differentiated.

Introduction

The present analysis was prepared by Dr. Joan Barata Mir, an independent media freedom expert, at the request of the Office of the OSCE Representative on Freedom of the Media.

This Analysis refers to the Law of the Republic of Armenia “On Audiovisual Media”, adopted on 16 July 2020.

The structure of the comment is guided by the tasks formulated by the Office of the OSCE Representative on Freedom of the Media. These tasks include comments on the law by comparing provisions against international media standards and OSCE commitments; indication of provisions, which are incompatible with the principles of freedom of expression and media; and recommendations on how to bring the legislation in line with the above-mentioned standards.

The Analysis first outlines the general international standards on freedom of expression and freedom of information and then presents those particularly referring to audiovisual media services. These respective standards are referred to as defined in international human rights treaties and in other international instruments authored by the United Nations, the OSCE and the Council of Europe.

Part II presents an overview of the legislation, focusing on its compliance with international freedom of expression standards. The Analysis highlights the most important positive aspects of the law and elaborates on the drawbacks, with a view of formulating recommendations for the review.

Part I. International legal standards on Freedom of Expression and Freedom of Information

General standards

In Europe, freedom of expression and freedom of information are protected by article 10 of the European Convention on Human Rights (ECHR), which is the flagship treaty for the protection of human rights on the continent within the context of the Council of Europe (CoE). This article follows the wording and provisions included in article 19 of the International Covenant on Civil and Political Rights (ICCPR), and is essentially in line with the different constitutional and legal systems in Europe.

Article 10 reads as follows:

“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 licensing 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 rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Freedom of expression and freedom of information are essential human rights that protect individuals when holding opinions and receiving and imparting information and ideas of all kinds. It also presents broader implications, as the exercise of such rights is directly connected with the aims and proper functioning of a pluralistic democracy¹.

On the other hand, freedom of expression and freedom of information, as well as the other rights protected in the Convention, are not absolute and therefore may be subject to certain restrictions, conditions and limitations. However, article 10.2 ECHR clearly provides that such constraints are exceptional and must respect a series of requirements, known as the three-part test. This test requires that: 1) any interference must be provided by law, b) the interference must pursue a legitimate aim included in such provision, and 3) the restriction must be strictly needed, within the context of a democratic society, in order to adequately protect one of those aims, according to the idea of proportionality².

At the OSCE level, there are political commitments in the area of freedom of expression and freedom of information that clearly refer to the international legal standards extant in this area.

¹ See the elaboration of such ideas by the European Court of Human Rights (ECtHR) in landmark decisions such as *Lingens v. Austria*, Application No. 9815/82, Judgment of 8 July 1986, and *Handyside v. The United Kingdom*, Application No. 543/72, Judgment of 7 December 1976.

² See for example *The Sunday Times v. UK*, Application No. 6538/7426 Judgment of April 1979.

In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 proclaims the right to everyone to freedom of expression and states that:

“This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards”³.

Also, the OSCE Ministerial Council Decision 3/2018, adopted by the Ministerial Council in Milan on 7 December 2018, establishes the following:

“1. Fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers;

2. Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference (...)”⁴.

Standards with regards to audiovisual communication

General Comment No. 34 concerning Article 19 of the International Covenant on Civil and Political Rights adopted on 29 June 2011 by the UN Human Rights Committee⁵, states the following (para 39):

“States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3.92 Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. <...> States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and license fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses”.

Paragraph 40 of the same document also establishes that:

“The State should not have monopoly control over the media and should promote

³ This document is available online at: <http://www.osce.org/odihr/elections/14304>.

⁴ Available online at: <https://www.osce.org/chairmanship/406538?download=true>

⁵ Available online at: <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

plurality of the media. Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.”

Similarly, the international rapporteurs on freedom of expression, including the UN Rapporteur on Freedom of Expression and Freedom of Opinion, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression, have adopted several joint declarations which included relevant provisions and recommendations particularly focusing on audiovisual media services regulation⁶.

There is a valuable and solid interpretative jurisprudence in the CoE, established in the course of decades by the European Court of Human Rights, which also includes the provision of audiovisual media services in their connection with the right to freedom of expression and freedom of information. The case law covers areas including the responsibilities of the State in allocating proper frequencies (*Centro Europa 7 S.r.l. and Di Stefano v. Italy*, 7 June 2012⁷), legal certainty in the regulation of broadcasting (*Groppera Radio AG and Others v. Switzerland*, 28 March 1990⁸), non-arbitrariness in the process of granting a broadcasting license (*Meltex Ltd and Movsesyan v. Armenia*, 17 June 2008⁹), the need to avoid monopolies (*Informationsverein Lentia and Others v. Austria*, 24 November 1993¹⁰), or the need to properly protect the independence of public service broadcasters (*Manole and Others v. Moldova*, 17 September 2009¹¹), among others.

Moreover, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe have developed numerous recommendations and declarations that contribute to clarify, to establish and to develop principles, requirements and minimum standards regarding the effective protection of rights included in Article 10 ECHR, in particular vis-à-vis different aspects related to the provision of audiovisual services (including media pluralism and transparency or media ownership, protection of journalists’ sources, public service media governance, remit of public service media in the information society, promotion of democratic and social contribution of public media, or the independence and functions of regulatory authorities, among others¹²).

Last but not least, the European Convention on Transfrontier Television also establishes a

⁶ See for example the latest Joint Declaration, adopted on 2 May 2018, on media independence and diversity in the digital age, available online at: <https://www.osce.org/representative-on-freedom-of-media/379351>

⁷ Available online at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-111399"\]}](https://hudoc.echr.coe.int/eng#{)

⁸ Available online at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57623"\]}](https://hudoc.echr.coe.int/eng#{)

⁹ Available online at:

[https://hudoc.echr.coe.int/eng#{"fulltext":\["Meltex%20Ltd%20and%20Movsesyan%20v.%20Armenia"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-87003"\]}](https://hudoc.echr.coe.int/eng#{)

¹⁰ Available online at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57854"\]}](https://hudoc.echr.coe.int/eng#{)

¹¹ Available online at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-94075"\]}](https://hudoc.echr.coe.int/eng#{)

¹² Available online at: <https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts> and <https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts>

common set of rules with regards to this specific media service among CoE member States¹³.

Part II. Overview of the legal reform

Content and scope of the legislation

The law that is the object of this analysis is titled Law of the Republic of Armenia “On Audiovisual Media”, adopted on 16 July 2020. The version used by this expert is an unofficial translation into English provided by the OSCE.

The law is divided into the following chapters:

Chapter 1 – General provisions

Chapter 2 - General requirements for audiovisual information of broadcasters operating in the republic of Armenia (sic)

Chapter 3 - Organisation of audiovisual programmes of broadcasters operating in the Republic of Armenia

Chapter 4 – The broadcasters and operators (sic)

Chapter 5 – Public broadcasters

Chapter 6 – State regulatory body

Chapter 7 - Authorisation, licensing of usage of the public multiplex slot and the activity of operators (sic)

Chapter 8 - Conditions for organising the dissemination of audiovisual information without licensing (sic)

Chapter 9 - Liability for violating the requirements of the legislation on audiovisual media

Chapter 10 – Final part and transitional provisions

Analysis of the provisions in light of applicable international standards

General provisions

Chapter 1 contains a series of general provisions regarding the objective and scope of the law, as well as the definitions of the main notions included in the text.

Regarding the scope of the law, and in line with what will be further elaborated in the next

¹³ Available online at: <https://rm.coe.int/168007b0d8>

epigraphs, a few legal voids and uncertainties can be found.

The law apparently covers the activities of traditional broadcasters (radio and television), and the provision of non-linear audiovisual services (i.e., content provided to an individual “upon his/her request for the purpose of watching and/or listening at the moment he/she wants according to the playlist (catalogue)”), the latter also referred as audiovisual information distributors or OTTs (over-the-top media services) in article 1.

In addition to this, the law also appears to cover main regulatory issues related to the status and obligations of telecommunications service providers, included in the law under the notion of network operators (encompassing multiplex and other type of networks such as cable or satellite). It needs to be noted that the latter do not constitute, per se, audiovisual services and their regulation should be better articulated under the general regime applicable to the provision of telecommunication services (or electronic communications, in the terminology of the European Union). Moreover, the legal regime established in these areas does not aim at including specific provisions focusing on content or audiovisual media matters, but it rather merely regulates certain technical aspects and the requirements to obtain a license.

The territorial scope of the law is based on a series of parameters (included in paragraph 5 of article 1). Two of them seem particularly problematic.

Firstly, the fact that “registration and transmission of audiovisual information is within the territory of the Republic of Armenia”. Pointing at registration as a requirement to be under the jurisdiction of Armenian authorities creates some sort of a circular reasoning, as the need to register (or obtaining a license) before these authorities will be determined by their jurisdiction over the provider in question. It is thus advisable to replace this parameter, together with the existence of a “transmission” activity in the territory of the country, with the requirements usually recommended by regional and comparative standards, focusing on the country of origin and main establishment of the audiovisual media service providers.

Secondly, according to paragraph 6 of article 1, a provider shall be considered operating in the territory of Armenia when it uses “an Internet connection being provided in the territory of the Republic of Armenia”. This criterium does not look clear. Internet connections provided in the territory of the country give access to media services originated anywhere in the world, inside and outside Armenia. The use of such technical parameters would only be confusing and inconsistent with the rest of jurisdiction criteria. In this area it is recommended to use the already mentioned parameter based on the country of origin and main establishment of the media outlet in question.

Article 3 describes the main concepts of the law. Paragraph 38 defines the term “code of ethics” as “a document independently drawn up by the Broadcaster on its own ethical norms in accordance with international standards”. This is a very limited notion of self-regulation. It is important to be aware of the difference between internal and external self-regulation. Internal self-regulation refers to mechanisms adopted within media organizations in order to guarantee the preservation of a series of ethical and professional principles as well as independent procedures for readers/audience members to complain. External self-regulatory schemes are based on the agreement of a series of media actors on the creation of an external and independent oversight mechanism and rules. The law only seems to refer to the former, with no reference to the latter. It would thus be important for the law to particularly promote the adoption and development of external self-regulatory mechanisms as well.

General requirements for broadcasters operating in Armenia

Chapter 2 includes some general obligations applicable to audiovisual service providers. Provisions in this area present a few issues that deserve to be outlined here.

Article 7 establishes that broadcasters shall ensure “the right of a person to respond to a speech directly addressed to him or her”. This is too broad and disproportionate of a restriction to the right of media and journalists to freely disseminate information. According to international standards, individuals can be granted the right to reply vis-à-vis media outlets in cases of publication of inaccurate facts when this causes harm to reputation or similar rights. Therefore, giving a person the right to force media outlets to publish a response on the mere basis of the existence of a previous reference or mention is an unnecessary and disproportionate limit to media editorial freedom. It is thus advisable to eliminate it.

Article 8 refers to the right of citizens to have access to important events via audiovisual media. This provision is worded in a very broad and sometimes imprecise and confusing manner. It is therefore recommended to amend this provision in order to adequately cover the following:

- a. The objective of the approval of lists of major importance events by the competent public authority is to identify the events that need to be offered by audiovisual service providers to the general public in a way that does not deprive a substantial proportion of the public of the possibility of following such events by live coverage or deferred coverage.
- b. In addition to this, audiovisual laws also establish provisions to safeguard the right of the rest of media outlets to report on such events. This right is guaranteed by allowing these outlets to freely choose short extracts from the transmitting signal with the identification of their source.
- c. The law must also define the conditions with respect to any compensation arrangements, the maximum length of short extracts and time limits.
- d. Granting the right to broadcast the important events with the participation of the national sports teams of the Republic of Armenia to the public service media, as the law currently does, may conflict with other valid, pre-existing transmission rights established by contract.

Article 9 contains a series of content restrictions applicable to audiovisual media service providers. It is necessary to note what follows:

- a. Paragraph 4 establishes that “advertisement and entertainment programmes shall be prohibited on mourning and remembrance days declared by the State”. Without prejudice to the need to respect this kind of commemorations, this measure may appear to be disproportionate in an environment where traditional media services compete with the provision of audiovisual content via online platforms, for example. Such platforms are per se subjected to much less regulatory constraints. For this reason it is recommended to transform this restriction into a mission for public service media to properly commemorate such type of occasions.
- b. Paragraph 6 prohibits “programmes the participants of which may, during the live programme, conditioned by the nature of the programme, perform actions prohibited by law due to an interpersonal conflict arisen as a result of dislike resulting from a long-

time dispute, previously known to the Broadcaster”. This provision introduces a *pro futuro* restriction, which forces the broadcaster in question to speculate about the way a still non-elaborated piece of content may finally lead to. This is a too broad and open restriction, which is insufficiently justified, introduces a disproportionate burden on broadcasters’ editorial responsibility and can also be considered as an unacceptable form of prior censorship.

Audiovisual content

Chapter 3 contains rules and restrictions regarding audiovisual content. These rules contain a series of uncertainties and problematic limits to the right to freedom of expression:

- a. The chapter imposes restrictions on the activities of “broadcasters”. However, considering the obligations established in article 10 regarding the need to use either a public or a private multiplex, it may seem that the rest of duties included in this chapter only apply to traditional broadcasters using terrestrial frequencies. Considering the importance and the impact of these provisions, it would be important that the law clearly specifies which providers are covered. It is also important to note that in other sections of the law (including the previous chapter) the term “broadcaster” seems on the other hand to refer to audiovisual media service providers in a broader sense. It is therefore necessary that the law is amended to eliminate these potentially contradicting indications.
- b. Article 10.7 establishes that in the cases of news programmes “the coverage of the same theme shall not exceed 25 per cent of the total airtime of the programme”. This is a completely arbitrary and unjustified restriction to the editorial freedom of service providers to distribute the time of their news programmes according to their own professional criteria. Decisions regarding the order, structure and topics covered by news programmes only belong to journalists and media editors. Any intervention in this field constitutes an infringement of their right to seek and impart information.
- c. Article 12 establishes restrictions for media outlets in cases of martial law and state of emergency. Broadcasters are obliged to “allocate airtime to the Prime Minister or the official who is officially the Commandant in the emergency area during a state of emergency, for making official statements”. In parallel, article 32.19 states that the independent regulator shall establish the procedure for and conditions of allocation of airtime in such cases. According to international law, during time of public emergency which threatens the life of nations, states may take measures derogating from certain of their human rights obligations and commitments under international and regional law instruments to the extent strictly required by the exigencies of the situation (article 4 ICCPR). General Comment number 29 of the United Nations Human Rights Committee¹⁴ stresses that such measures are limited to the extent strictly required by the exigencies of the situation and that derogations of other articles of the Convention (such as article 19) cannot be adopted at will. Despite the fact that martial law and state of emergency are (presumably) only declared in very exceptional cases, it is important to note that they cannot thus justify every derogation of the right to freedom of

¹⁴ <https://digitallibrary.un.org/record/451555?ln=en>

expression, and particularly the editorial independence of media outlets. For this reason, the law must introduce conditions and restrictions in order to prevent authorities from using airtime from broadcasters in an unnecessary and unjustified manner. The law thus must specify that such power can only be exercised to disseminate information or make announcements of fundamental importance in order to properly safeguard public safety and citizens' basic rights.

Audiovisual media service providers

Article 15 sets a series of prohibitions regarding the establishment or foundation of audiovisual media outlets. These prohibitions need to be carefully reconsidered, as they may deprive certain social groups or communities of their right to freedom of expression via any possible form of audiovisual media communication. In particular, article 15 excludes "heads of communities and affiliated persons thereof", "political parties", "foundations of political parties", "religious organisations" and "citizens under the age of 18".

Some of these restrictions may be justified when it comes to the applications for licenses to provide radio and television programmes via limited resources (i.e., terrestrial frequencies). In order to properly guarantee pluralism and diversity, as well as an excessive domination of the public sphere by those who already hold influential positions in the society, it may be necessary and proportionate to establish legal or regulatory restrictions, which limit the access to certain transmission systems. However, establishing a general and broad prohibition to create any audiovisual platform is a clear, unnecessary and disproportionate restriction to the right of freedom of expression of groups and entities present in the society. It needs to be taken into account that in the current days there are many different platforms and distribution systems (particularly using the Internet) which would allow such communities to participate in the public sphere and present their own options and opinions without eroding the presence of other voices in the audiovisual public sphere.

It is also important to note that according to international standards and best comparative legal practices, besides public service media and private/commercial media, States must also enable the existence of community media, i.e. non-for-profit media outlets whose main objective is to represent and give voice to particular groups, communities or areas of a country. These groups include, precisely, all sorts of foundations and associations, political organizations, religious communities, social and linguistic groups, universities, NGOs and many others. Therefore, the law needs to eliminate the mentioned prohibition and include a legal regime that properly enables the creation and operation of community media outlets.

Similarly, the complete prohibition for citizens under 18 to create audiovisual media outlets represents a discrimination that is not supported or justified under international human rights law. Despite the need to protect the interests of minors under certain circumstances (particularly regarding their personal exposure and the economic implications of their activities) a total restriction to create their own media outlets (taking particularly into account the extensive use of online content distribution platforms by youngsters) is neither justified nor proportionate.

Article 18 contains a few "anti-monopoly guarantees" (sic). In particular, legal or natural persons cannot be founders or participants in the capital of more than two television stations. It also stresses that these restrictions "shall not extend to the audio programmes transmitted by

the Broadcasters”. The establishment of legal and regulatory provisions aimed at limiting the concentration of media power and fostering media pluralism and diversity can only be welcomed. However, in order for such rules to be in line with international standards they need to be based on clearly explained economic and communication criteria, and not to present any inconsistencies or partial approaches. In this sense, the fact that the law, without any context or explanation, limits only a very small amount of media concentration situations focusing only on one type of transmission system raises serious doubts regarding the rationality and adequacy of such provision.

Article 21 establishes very limited provisions regarding the use of satellite distribution systems. In particular, the fact that broadcasters “may carry out satellite broadcasting after concluding a contract with a relevant satellite agency and notifying the state regulatory body”. It is necessary to note that this provision should be better included in the rules governing the activities of distribution systems in general (network operators in the terminology of the law) independently from the specific platform used (satellite, cable, IP...).

Public media

Chapter 5 is devoted to the regulation of different aspects related to public service media.

Article 22.3 establishes the following:

“The public broadcaster may transmit only one programming through the public multiplex when having no authorisation and licence for using the slot. In case of wishing to transmit an additional programming, the public broadcaster shall take part in a competition for using the public multiplex slot”.

The law seems to only grant one single channel (programme or slot) for the public service media and then forces it to compete with private/commercial broadcasters should it “wish” to transmit additional programming.

The role of public service media within democratic societies is particularly underscored in applicable international standards, especially in the Council of Europe and the European Union legal frameworks. According to them, public service media need to count on an adequate number of distribution platforms in order to be able to properly fulfil its important mission. In light of these premises it has to be said, firstly, that granting one single channel seems clearly insufficient in the current context of an increased number of available digital terrestrial channels. Secondly, it is the responsibility of legislators and regulators to define the number of channels and platforms needed for public service media and thus it is not adequate to leave it to the outcome of a tender process. Thirdly, considering the different nature and missions of public service and private broadcasters, making both compete for a frequency is neither adequate nor justified. Last but not least, considering the different distribution technologies available, the law must also establish the mechanisms according to which public service media can also be present in platforms such as cable, satellite, and the Internet.

According to articles 23 and 25 of the law, members of the board (Council) of the public service media body are appointed by the Prime Minister on the basis of a competition procedure and for a term of six years. Persons holding the citizenship of the Republic of Armenia with command of the Armenian language, higher education and experience in the audiovisual sector,

as well as science, education, culture and journalism may become members of the Council. The audiovisual services regulator shall establish a temporary competition commission with a view to fill any vacant position of member of the Council. Individuals working in the fields of journalism, media management, science, culture and arts, as well as representatives of non-governmental organisations may be members of the competition commission. The procedure for the “formation” (sic) of the Competition Commission is to be established by the regulator. These provisions are quite problematic in terms of applicable international standards for the following reasons:

- a. The requirements to become a member of the Council are very broad and do not guarantee the level of expertise that is necessary to undertake this leadership position. The law must thus have included additional conditions such as high-level managerial experience, accredited knowledge of economic, legal or technical aspects of audiovisual media services, as well as high ethical standards (in particular, absence of previous criminal convictions in cases related to corruption or management of public or private companies, for example).
- b. The criteria and mechanisms to appoint the members of the competition commission are not clearly established by the law thus leaving an excessive margin of discretion in the hands of the regulatory body (via the appointment of an internal selection commission).
- c. The criteria and mechanisms of the basis of which the competition commission selects and evaluates the candidates and finally appoint the members of the Council need to be clearly defined and established by the law.

Article 29.2 of the law defines the basic criteria according to which the provision of the public service is funded. According to these, funding shall not be less than the amount approved for the previous year by the competent authority. It also adds that “(t)he amount of budget funding of the Public Broadcasters may proportionally be changed due to the change in the proportion of the state budget” (sic). The financial needs of public service media are defined on the basis of the specific missions and objectives defined by legal and regulatory instruments. Establishing by law the budget of a public service body on the mere basis of considering the previous year’s budget as a minimum amount is completely insufficient and almost arbitrary in order to guarantee that public service media receive adequate and sufficient funds to properly perform their activities. Therefore, the law would need to introduce the provisions that would allow:

- a. Properly establish the financial costs of providing the public service.
- b. Identify the different sources of income (advertising, sponsorships, etc.) in order to calculate the need for public funding.

Independent regulatory body

Articles 34 and 35 of the law establish the procedure for the nomination and election of the members of the Commission of Radio and Television. The following needs to be noted regarding this matter:

- a. In order to become member of the Commission, an individual needs to have been

citizen of the Republic of Armenia and have resided in the country for the last four years, to have the right to suffrage and good command of Armenian, to have at least three years of professional work experience in the fields of broadcasting, economy, management, engineering, culture, arts or law, higher education, and to be a reputable specialist in the field of mass media. In light of what was previously mentioned regarding the Council of public service media bodies, these requirements are still very open, vague and open to interpretation. In this sense having “professional work experience” or a “reputable” degree of specialisation does not guarantee per se the qualities that would be required to engage in regulatory decision-making processes with a sufficient degree of competence and independence. Once again, it is recommended that such requirements are replaced with more specific ones. In particular, the law must require accredited knowledge and top-level professional experience, or technical, journalistic or economic experience connected to media legal and ethical matters, as well as high ethical standards (absence of previous criminal convictions in cases related to corruption or management of public or private companies, for example).

- b. Members of the Council are elected by the National Assembly, upon recommendation of the competent committee, by at least three fifths of votes of the total number of Deputies, and for a six-year term. The law does not specify the concrete procedure and election mechanisms. It indicates that the Constitution and the law on "Rules of Procedure of the National Assembly" need to be followed for this purpose. In principle, the use of the general procedures for the adoption of decisions by the National Assembly is not per se a problematic option, provided that some specificities are contemplated as well. In this sense, the requirement of a qualified majority is in line with international standards and comparative best practices and can only be welcomed. This being said, it is advisable that the law also incorporates additional provisions regarding the participation of civil society, journalists and similar organisations at some point of the mentioned process.

Regarding the budget of the regulatory authority, it would be important for the law to establish that in any case the regulator must count on sufficient funds in order to perform activities in an efficient, proper and independent manner.

Licenses, authorisations and notifications

The types of requirements and authorisations (in the broadest sense of the term) for the provision of different audiovisual media services are regulated under chapters 7 and 8 of the law. Such rules need to be analysed separately:

- a. Article 43 establishes that it is needed to apply for an authorisation in order to obtain the “status of broadcaster”. This legal status does not seem to give per se the right to provide audiovisual media services, but it rather appears to be a sort of pre-condition in order to participate in more specific procedures (e.g. license tenders). This additional burden represents an unnecessary and disproportionate condition or limitation to the exercise of the right to freedom of expression. State interventions in this field (when necessary) are to be reduced and concentrated to the minimum necessary to protect concrete public interest values. Therefore this general authorisation needs to be eliminated, inasmuch as other more specific procedures are contemplated.

- b. Regarding the license to use a multiplex slot, articles 44, 45 and 46 are drafted in a confusing way regarding the specific procedure and requirements according to which such licenses are to be granted. It is therefore very important that the law clearly specifies the parameters or the procedure according to which the independent regulator will establish the evaluation criteria applicable to each license tender process. Such parameters may include elements related to the respective content offer (diversity, quality, innovation, etc.), the economic viability (business model, current economic situation, staffing policies, ...) as well as strictly technical capacity. It is also important that the law guarantees that every licensing decision is transparent and properly justified, thus avoiding any kind of secrecy or opacity.
- c. Regarding the licensing of the activity of a private multiplex operator and network operators in general (articles 47 to 52), firstly, it needs to be noted that the corresponding provisions essentially cover technical and infrastructure aspects related to the transmission activity (instead of the broadcasting service). These are thus rules to be preferably included in the telecommunications (or electronic communications) legislation and put under the oversight of the telecommunications regulation authority. Secondly, the law omits to include almost any content or broadcasting provision when regulating the activities of such providers, in areas such as obligations to communicate the identity and origin of the editors of the channels being transmitted, must-carry rules or other similar measures aiming at protecting diversity and pluralism. Moreover, the restriction introduced in article 49.4 in the sense that network operators shall not produce or distribute their own audiovisual content appears to be excessive and arbitrary. Thirdly, it also needs to be stressed that, in any case, the requirement to obtain a license would only be justified when the distributor aims at using scarce infrastructure technologies (such as terrestrial frequencies) but not vis-à-vis other cases (e.g. cable and satellite) where in principle, and according to best practices in the OSCE, European Union and the Council of Europe, a notification to the competent telecommunications authority would suffice.
- d. Article 45.4 establishes that a license to broadcast using a multiplex frequency is granted for a period of seven years, the licence to establish and operate a whole multiplex is open-ended, and the licence for other network operators is to be issued for a period of 10 years with the possibility of extension. It needs to be noted that the law does not provide any kind of rationale to justify this unbalanced approach. On the one hand, seven years for a terrestrial broadcasting licence looks like a very short timeline considering the investments and financial uncertainties still linked to the deployment of DTT services. On the other part, giving a private multiplex operator an undefined period of time (considering also the regulatory deficiencies mentioned in the previous paragraph) may have a serious negative impact on the protection of pluralism and diversity. Last but not least, limiting the time for other network operators to provide transmission services does not seem a justified measure, inasmuch as they do not use scarce technologies or resources.
- e. The law needs to clearly establish that the provision of traditional media services (broadcasting) via non-scarce technologies (satellite, cable, IP, ...) only requires a minimum intervention from the regulator via a prior notification including basic

information about the provider. Same regime must apply to the provision of non-linear audiovisual services (either as an OTT service or any other possible model).

Infractions and penalties

Chapter 9 establishes the rules governing the liability of different service providers in cases of violation of the legal provisions. These rules are set, in general, in a very precise way, which is commendable in terms of legal certainty. The need to respect the principle of proportionality is particularly taken into consideration, as penalties are not indicated in absolute figures but as percentage of yearly revenue. There is also a reasonable graduation of sanctions connected to the seriousness of the infraction, and the most severe measures are clearly reserved for very serious misdemeanours only.