



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

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The State of Media Freedom in Armenia

Observations and Recommendations

The OSCE Representative on Freedom of the Media, Miklos Haraszi, accompanied by Adviser Ana Karlsreiter, visited Yerevan, Armenia from 19 to 21 June 2006. The visit was made following the invitation of the Government of Armenia, and was co-organised by the OSCE Office in Yerevan. The aim of the visit was to assess the state of media freedom, giving special attention to the forthcoming changes in the legal framework, required as a result of amendments to the Constitution adopted in November 2005.

The Representative appreciated the high level of co-operation with the Armenian authorities both in the preparations and during his visit. During the meetings with civil society and government alike, the intention to improve the media situation was strongly conveyed.

The Representative was received by the President of the Republic of Armenia, Robert Kocharyan.

He also held meetings with:

- The Chairman of the National Assembly, Tigran Torosyan;
- The Deputy Foreign Minister, Armen Baibourtian (Foreign Minister Vartan Oskanyan was away from Armenia during the assessment visit);
- The Deputy Minister of Justice, Gevorg Kostanyan;
- The President of the Council of Public TV and Radio Company of Armenia, Alexan Harutyunyan, the Executive Director of Public TV Armen Arzumanyan, and Executive Director of Public Radio, Armen Amiryan, .
- The President of the National Commission for TV and Radio, Grigor Amalyan;
- The Editor-in-Chief of the daily newspaper Azg, Hakob Avetikyan;
- Journalists, editors, and managers from various media outlets, both print and electronic;

- Representatives of national and international non-governmental organisations;
- Foreign diplomats.

General overview

Armenia has made significant progress in improving media legislation, but media pluralism remains limited to the independent, but financially weak and less influential, print media.

As noted by the Chairman of the National Assembly, Tigran Torosyan, the laws still lag behind the stipulations of the Constitution. One could also add that reality is still behind the laws. Examples include the insufficiencies of the Law on TV and Radio Broadcasting, as well as the lack of implementing regulations to acts of the Freedom of Information Law.

Limited pluralism in the broadcasting sector is a major problem. The broadcast outlets, with the exception of a limited number of programs which present alternative views, do not offer in a consistent way objective and pluralistic information to society. Broadcast media can be described as predominantly pro-Government, despite the transformation of state TV into a public-service broadcaster, and the existence of a number of private channels. In conformity with current legislation, all members of the regulatory bodies are directly appointed by the President of Armenia.

The print media is pluralistic, and news coverage is diverse, at times openly critical of politicians. However, as none of the outlets exceeds a circulation of 3-4,000 copies per day, the Armenian print media is exceptionally weak, playing a limited role in informing the public.

There is a lack of transparency regarding media ownership. This is caused by insufficient ownership disclosure legislation.

Since 2005 there have been very few cases of violence against journalists. It is also commendable that no libel cases have been initiated for several years, although the complete decriminalization of libel is still needed.

Taking into account every aspect of the media landscape, the media situation in Armenia could be further improved.

Recommendations on how to improve media freedom in Armenia can be found at the end of each chapter and at the conclusion of this report.

The state of broadcasting

Lack of independent broadcasting media, delay in passing the remedial legislative changes

Broadcast media remains by far the dominant source of information in Armenia. In 2001, state TV was transformed into a public-service broadcaster. Despite the fact that a high number of private TV stations operate throughout the country, the coverage of political life lacks pluralism, as it usually favours the Government, both in private and public-service broadcasting.

The explanation for this lies in the present legal setup. The current Law on TV and Radio Broadcasting provides for two bodies, the Council of Public TV and Radio Company (PCTR),² and the National Commission for TV and Radio (NCTR). The members of both boards are appointed by the President, and therefore all broadcasting outlets regulated or controlled by these boards are exposed to governmental influence.

A Constitutional amendment, approved in 2005, acknowledged this problem. If implemented, it would result in changes of the mechanism of member selection for the regulatory body of private and public media. Article 83.2 prescribes an amendment to the Law on TV and Radio Broadcasting, based on which half of the members shall be elected by the National Assembly, while the other half shall be appointed by the President of the Republic.

Yet, even if the above legal changes were already passed and implemented, the governmental control would not necessarily be reduced, namely during periods when the Parliamentary majority is of the same political affiliation as the Presidency.

Neither would these amendments handle the requirements of the digital convergence revolution. The International Telecommunication Union (ITU) this year has allocated Armenia's digital terrestrial frequency range. That would bring a proliferation of available channels, as would the convergence between telephone, satellite TV, and Internet. All this should result in an adapted licensing procedure with significantly reduced governmental influence, leaving the decision about future channels to the actual companies and to telecommunication market share regulations.

During the visit, the Representative was given no definitive information on the timing of the adoption of amendments to the Law on TV and Radio Broadcasting. It is assumed by the Representative that the amendments will not be adopted before the upcoming parliamentary elections in 2007.

As a first step, the legislative changes provided for by the Constitutional amendment should be prepared by the Government, discussed in a public forum with members of civil society, and passed in Parliament as soon as possible, certainly before the Parliamentary elections in 2007.

However, legislative changes should not be limited to a “half Presidential - half Parliamentary” board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.

Public Broadcasting

Unsatisfactory transformation of State TV into a Public Service Broadcaster

Although in 2001 the state TV was transformed into *Channel HI*, the first public-service broadcaster in the CIS region, the channel still has yet to play its role as a public-service broadcaster.

Financed from state allocations and advertisement revenues, *Channel HI* remains the most popular TV channel since the transformation. Given its high impact on public opinion, it is problematic that all five members of its board are appointed by President Kocharyan. The lack of political independence of the Board is seen as one of the main causes for the lack of objectivity and diversity in the news coverage of the public-service broadcaster, as confirmed by recent civil-society monitoring endeavours, and also by interlocutors during the visit.

Currently, *Channel HI* does not conduct any systematic self-monitoring of, for example, access of different political parties to air time and coverage of their activities, or compliance with advertising limitations. The Executive Director explained this situation by resource constraints.

According to the President of PCTR, Alexan Harutyunyan, even after the adoption of the constitutionally required amendments of the Law on TV and Radio Broadcasting, the members of PCTR will continue to be named by the President, and will serve as the managerial body responsible for policy making and programming.

This is also how President Kocharyan interpreted the future amendments in his conversation with the Representative. Citing the principle of the division of labour between branches of public power, he said that the appointment of the board members of PCTR will remain the task of the President.

However, the board should symbolize and ensure independence from political forces. A board nominated by the President is not compatible with a public-service broadcaster, and could result in governmental interference with its work.

Regardless of the new function of the PCTR, the members of the Council should not be selected by one political force, or by political forces alone.

The selection criteria of the public broadcasting board should reflect transparency and ensure both a high level of professionalism and pluralism of reflected views.

In order to fulfil the tasks of a genuine public-service broadcaster, the board should carry out continuous monitoring of access of different parties to air time and coverage of their activities, the results of which should be made public.

Private broadcasting

Limited alternative voices on air, partial licensing body, and inadequate anti-monopoly rules

There are four nation-wide commercial TV channels. In total 57 operate in the country, and nearly half of them are broadcast from Yerevan and have limited coverage. Numerous radio channels exist; their role is limited to entertainment with the only exception of the re-broadcasts of *Radio Liberty* on public radio.

Although numerous private broadcasting outlets exist, in this sector the Representative found no systematic coverage of the diversity of public opinion.

The Presidential Administration informed the Representative in a letter of eleven programs of seven channels, which from April 1 until June 23 gave access to non-governmental speakers on 73 occasions. (The letter also makes a reference to the public broadcaster, stating that it does not broadcast talk shows or discussion programs that could host alternative voices, but it covers Parliamentary debates unedited.)

In spite of these examples, the monitoring survey of the *Yerevan Press Club* (YPC) confirms that there is a considerable lack of alternative voices on the air. The five largest TV channels (including the public-service broadcaster) predominantly focus on the day-to-day activities of the leadership of the country, on state structures, political figures, and influential businessmen.

Licensing is one of the main tasks of NCTR, the regulatory body for private media. President Kocharyan informed the Representative that after the forthcoming amendments to the Law on TV and Radio Broadcasting, the Parliament-nominated part of the board will not be changed immediately. Instead, new members will be phased in upon the expiration of their current mandates. That would mean no major innovation in the present system before the parliamentary elections of 2007.

Many interlocutors see the example of TV channels *A1+* and *Noyan Tapan* as proof that the licensing activities of NCTR, in the current legal setup, are non-transparent and politically motivated. In 2002, these fully operational TV stations, regarded by many as politically independent from the Government, were denied renewal of their licenses. Since then, *A1+* has applied more than ten times, but was rejected based on different reasons. The case of *A1+* was submitted to, and accepted by, the European Court of

Human Rights (ECHR). As indicated by the Deputy Minister of Justice, a final decision by the ECHR is expected in the near future.

NCTR doesn't have the legal power to look into the ownership structure of licensing applicants. The anti-monopoly provision of the Law on TV and Radio Broadcasting states that "each physical or legal entity can be licensed only for one Television and Radio Company". In fact, that does allow for companies to own several TV or radio stations. It only takes to establish as many companies as the number of stations the firm wishes to own. As confirmed by the President of NCTR, in reality there are people who own several broadcasting companies, which, in turn, share the same buildings and staff members.

This means that there aren't any guarantees for pluralism in ownership, which, in any society, is the foundation for a pluralistic access to information.

The amended law on TV and Radio Broadcasting should also be clear about the tender procedures of licensing. The selection criteria must include the interests of pluralism; the licensing process must become more transparent, using more quantifiable, thus publicly controllable benchmarks.

In the coming law, provisions for pluralism should include clear-cut market share provisions. NCTR should be given the authority to check parent companies in order to preclude monopolization of the broadcast market.

Advertising

Regular violation of the laws due to poor enforcement

The market for commercial advertising in Armenia is very limited, both in size and scope. Broadcast media keeps prices artificially low by exceeding the limits of advertisement amounts allowed for them. This abuse is made possible by the poor enforcement of the laws regulating advertising, leading to unpunished violations of both time and content limitations.

The Law on Advertising regulates advertisement in private media outlets, allowing a maximum of ten minutes of advertising per hour of broadcasting. Based on surveys carried out by *IREX Armenia*, many TV companies do not observe these provisions, often carrying out as much as thirty minutes of advertising per one hour of broadcasting.

According to the Law on Advertising the advertisement of alcohol and tobacco is prohibited on TV. However, as revealed by an *Internews* survey, only 8 out of 19 television companies complied with this legal requirement. NCTR President, Mr. Grigor Amalyan, acknowledged only that this is going on in a hidden way, for example by advertising a water brand which is a namesake and a look-alike of a vodka brand. Asked

if he could sanction these nevertheless, he said the law does not give his body the power to sanction hidden advertisement.

Currently, NCTR does not conduct regular monitoring. According to the explanation offered by its President, they lack the technical means to carry out monitoring, so they can only follow eight channels per day.

It is of serious concern that the public-service broadcaster is among those who violate advertising limitations. *IREX Armenia* claims that, measured on any time basis (e.g. hour, day, week), the public-service broadcaster, on average, exceeds three times the limitations of the law.

This unique situation was explained by the President of PCTR by the ambiguity of interpretation allowed by the law. He referred to the Law on TV and Radio Broadcasting, unlike the Law on Advertisement, specifies the advertising volume at a maximum 5% of programming, without defining over which period of time this 5% should be determined or averaged. They prefer, he said, to interpret this as a daily limit (thus allowing, for example, for unlimited prime-time advertisement quantities).

All these misuses of advertising limitations remove a potential income source from the print media, thus further endangering the development of a sustainable, balanced media market and a multi-access information system.

The implementation of the laws on advertising should be supervised properly to ensure the development of a pluralistic advertising market.

The new law should ensure more power to NCTR on monitoring the content and the frequency of advertisements, including the hidden ones.

Advertisement limitations of both public and private broadcasters should be regulated by one law.

Following international standards, the law should clarify that advertising limits must be measured per hour of broadcasting.

The state of print media

Free but financially weak, with limited influence

Vigorous media pluralism remains limited to the print media, where news coverage is diverse, at times openly critical of politicians of all shades. However, with none of the outlets exceeding a circulation of 3-4,000 copies per day, the Armenian print media can be described as exceptionally weak, playing a limited role in informing the public. There

is some state-owned print media, but its circulation does not reach the level which would create an obstacle to pluralism.

The main reasons behind the financial weakness of the print media can be explained by the limited commercial advertising market, and the insufficiencies of the distribution system.

Regarding the insufficient distribution system, the attention of the Representative was drawn to the necessity to amend the Law on Postal Communication. This piece of legislation is seen by the media NGOs as a hidden form of censorship. According to this Law, private distribution companies have to pay fees for the right to deliver newspapers. If implemented, this Law would eliminate most of the current small distributors from the market, and place the country's newspaper distribution service firmly in the hands of the two state-connected enterprises, *Haipost*, Armenia's postal service, and *Haimamul*, the main kiosk vendor.

As was agreed to by the Ministry of Justice, neither subscription, nor distribution should be subject to licensing.

The Government should consider introducing special protection of the print press in order to promote media pluralism, for example a supportive distribution system, VAT or tax breaks.

Access to Information

Insufficient implementation of the Freedom of Information Law

Although Armenia adopted one of the most progressive Freedom of Information Laws in CIS countries, access to information by media professionals remains limited. This phenomenon is due to the poor implementation of the law.

In order to improve the situation, the Freedom of Information Center of Armenia (FOICA) has developed sub-legislative acts necessary for proper implementation. However, so far the Government has not approved these proposals. The reason is that they are based on certain provisions of the Freedom of Information Law, which the Government wants to change. These articles are Article 5 on Recording, Classifying and Maintaining Information, and Article 10 on the Conditions of Providing Information. On the other hand, these provisions are the very progressive parts of the law, which warrant immediate implementation.

Public discussion and adoption of sub-legislative acts are necessary to ensure the proper implementation of the law.

Article 5 and Article 10 are important guarantees for freedom of information, they should not be subject to further changes or amendments.

Legislation on libel and insult

Libel and insult still remain criminal offences

Criminal libel cases have not been initiated for several years. In 2004 the Criminal Code was amended and imprisonment for defamation remained an option for punishment only when the offence is committed more than once by the same person. A maximum criminal pecuniary penalty of thousand times the minimum wage is applicable for defamation. Furthermore, Article 318 of the criminal code provides for special liability for “insulting a representative of the authorities”.

The Representative welcomed the 2004 reform as progressive. At the same time, this reform should be completed.

Defamation should be decriminalised completely.

A moratorium on criminal defamation charges may be introduced while decriminalisation amendments are being prepared and adopted.

Article 318, on “Insulting a representative of authorities”, should be repealed.

Guidelines should be introduced for civil courts in order to ensure that the amount of damages in civil defamation cases is proportionate to the charge.

An effective media self-regulation body should be established and it should assume the mediating role in media-related disputes.

Future co-operation and activities

The Office of the OSCE representative is considering a series of training activities

The Armenian authorities expressed readiness to further co-operate with the Office of the Representative on a number of issues. During a discussion with the Deputy Foreign Minister, Armen Baibourtian, the Representative offered training courses to assist press and public information officers to learn modern techniques of effective management of press services. Furthermore, trainings in the field of self-regulation could be implemented. The Representative also counts on the active participation of Armenian stakeholders in the annual RFOM conference entitled “The Business of Media”, which will take place in Tbilisi, Georgia on 2-3 November 2006.

The Office of the Representative continues to offer its legal expertise to assist Armenia in the finalization of the necessary legislative amendments.

Recommendations

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- *However, legislative changes should not be limited to a “half Presidential - half Parliamentary” board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.*

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