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IMPLEMENTATION OF THE FREEDOM OF INFORMATION LAW IN ARMENIA

The Republic of Armenia's Freedom of Information Law, passed by the National Assembly on 23 September 2003, was the result of successful interaction between civil society and the deputies of the National Assembly. The law, which entered into force on 15 November 2003, regulates the activities in this sphere of government agencies and local self-government bodies, as well as those of private organizations that perform public functions, are monopolies or major players in the relevant product market.

Now, however, two years after the law was passed, it is obvious that it is one thing to have a good law and quite another to put it into practice. The implementation of the Freedom of Information Law is, along with access to information, a problem for society as a whole. For two years now, the government has not taken any serious measures to ensure the proper execution of the law's provisions. It has failed to draw up and adopt any resolutions on the procedure for supplying information, or for storing and documenting the information held by respective agencies. The process of appointing officials responsible for providing information is moving far too slowly.

The data from monitoring performed by the Freedom of Information Centre and its partners shows that, in certain government agencies and local self-government bodies, access to information and mechanisms for the enforcement of the Freedom of Information Law fall short of what is required.

The studies performed by our organization in Armenia brought to light a number of general problems that exist in other countries as well. These problems were nothing new to us, considering the transitional period in the country's development. Nevertheless, I would like to draw your attention to some problems that must be solved to secure proper enforcement of the provisions of the Freedom of Information Law.

1. The main problem is that Armenia's citizens, public servants, local government officials, and corresponding organizations are unaware the provisions of the Freedom of Information Law, and sometimes even of the very existence of this law. Our organization is currently working with regional television studios to organize a talk show on the topic "Applying the Freedom of Information Law," and is also holding seminars in all parts of the country for active citizens, nongovernmental organizations, journalists, and local government officials in an attempt to fill this gap. If national and regional government officials are basically informed about the Freedom of Information Law and its provisions, many officials at the local level of government are uninformed as to the provisions of this law, or have never heard of it altogether. The country's citizens themselves frequently do not know about the rights granted them in this Law, which leads in turn to violations of its provisions.

2. Many of the shortcomings of the Soviet period, including the officials' habit of working in strict secrecy, have been handed down to us, resulting in nontransparency of national government agencies and local self-government bodies and corruption of their officials.

3. The participatory governance mechanism does not work due to insufficient exchange of information between public servants and citizens of the country. Frequently, it is not just public servants that fail to provide necessary information who are at fault, but also the very citizens who do not demand from national government agencies and local self-government bodies the information they need and therefore fail to secure the observance of their rights.

4. Public mistrust of the existing judicial system. Although the Freedom of Information Law provides for appealing in court any unlawful refusal to provide information, many citizens prefer not to file claims with the courts, basing their decision on the courts' corruption and submissiveness to the government machine. Practice shows, however, that if one is persistent, one can manage to protect one's rights. An example of this is a suit brought by a Gyumri resident, who was represented in court by the Freedom of Information Centre's regional lawyer, against the Ministry of Health and the Berlin Mother and Child Centre, which failed to provide the plaintiff with information he had requested. The court handed down a decision in favour of the respondents, since they had provided the information requested after the complaint was filed with the court, without waiting to hear what the decision of the court would be. Judicially, the Freedom of Information Centre lost the case; in fact, however, the requested information was supplied, just as was demanded.

5. The absence of a unified request processing system in government agencies. Frequently, national government agencies and local self-government bodies do not know whether they have a particular piece of information. One department or unit might not know what other divisions are doing. In addition, some agencies do not have the proper reference materials needed to inform someone how to gain access to information or to whom to turn in order to obtain a particular piece of information. A simpler procedure for designating the officials responsible for providing information could significantly improve the process of accessing information.

6. The absence of a unified system for the registration, classification, and storage of information in government agencies, and of a procedure for accepting payment for information provided. The Freedom of Information Law stipulates that a reply to a request shall be issued within the period of five days. However, due to the absence of a unified system of registering, classifying, and storing information, the established deadlines are often missed. The law also stipulates that appropriate payment may be received for supplying information in a volume of more than ten printed pages. Under the Freedom of Information Law, the Republic of Armenia Government is to devise a unified system of registering, classifying, and storing information in government agencies, along with a procedure for these agencies to receive payment for supplying information. To date, however, the government has failed to do so.

The following are the violations of the Freedom of Information Law most commonly encountered:

1. Requests are denied without legal grounds. Despite the Freedom of Information Law clearly defining the grounds for refusing to supply information, national government agencies and local self-government bodies stop at nothing to get rid of journalists and ordinary citizens to whose requests they do not wish to respond. In such cases, the answers most commonly heard are "We don't have the time," "We don't have that information," and "We don't have the necessary means (paper, copying machines, etc.)." An interesting approach to the matter of not having sufficient materials was found in the city of Vanadzor, Lori District. In this most active area, applicants solved this problem through their own efforts. They bring with them the necessary amount of blank paper and receive the information they ask for in return. On the other hand, the local self-government bodies in Vanadzor have already realized that it is their duty to supply any kind of information that is not prohibited by law and do so without delay—something that cannot be said about certain other areas.

2. Requests remain unanswered. The two years of experience in implementing the Freedom of Information Law show that national government agencies and local self-government bodies would prefer not to respond to a request, rather than refuse to supply information, since the law demands that any refusal be legally grounded and appended, with references to the appropriate legal provisions. It must be admitted that shifts have taken place toward improving the situation here, too. The number of requests remaining unanswered has dropped substantially.

3. Demanding that a request be justified. Article 9 (4) of the Freedom of Information Law states that the person requesting information shall not be obliged to justify his/her request. To this day, however, we encounter cases where refusal to supply information is rationalized by stating that no reason was given for requesting a particular piece of information.

Recommendations for Improving Access to Information

Based on the experience of the last five years, we offer the following recommendations for effectively implementing the Republic of Armenia Law on Freedom of Information:

- **Establish a unified system.** A unified system for the storage of information should be developed for all government agencies. It is also very important that the exchange of information between different government agencies be promoted.
- **Appoint officials responsible for access to information.** All national government agencies and local self-government bodies should, in the shortest possible time, appoint officials responsible for access to information.
- **Provide technical means.** Officials responsible for access to information should have whatever technical resources they require to perform their functions.
- **Use Internet sites.** It is recommended that all respective agencies publish information they have on their own websites, thereby facilitating the procedure for access to their information. We recommend that agencies without websites create them. It is also recommended that appropriate funds to keep the sites in working condition be allocated.
- **The government should adopt appropriate resolutions.** As was noted above, the government should adopt appropriate resolutions on the establishment of a unified system for registering, classifying, and storing information in government agencies, and on a procedure for collecting payment for information supplied by government agencies.
- **The right of access to information should be protected.** The Human Rights Ombudsman should be more active in examining cases of violation of this right and in taking any measures required to protect the right of access to information that has been denied. Officials should bear responsibility for any illegal acts they may perform.
- **Public servants should be trained.** We recommend holding special training seminars for officials responsible for access to information; these seminars should include both the legal aspects of access to information and the technical skills needed for managing information. Under the Freedom of Information Law, experts drawn from civil society could be involved in this process.
- **Society must be made informed.** Both the government and civil society groups ought to inform the public at large of its right of access to information and the mechanisms for exercising that right. Government Internet sites should contain information on how information can be requested. The publication of handbooks on freedom of information for the average citizen would serve the same goal. It is recommended that journalists make more active use of the Freedom of Information Law and expose problems with access to information, thereby raising public awareness in this area. Journalists, like other active users of the Freedom of Information Law, can monitor the practice of applying this law, thereby helping shape a transparent government in Armenia.
- **The public should make use of the law.** People should exercise their right of access to information, taking advantage of the provisions in the Freedom of Information Law, and request information from the central and local government agencies.

The Freedom of Information Centre, a nongovernmental public organization, was founded in 2001. The Centre's main goal is to protect citizens' constitutional right of access to information. At present, the Freedom of Information Centre is developing its operations in five main areas:

- 1. Monitoring implementation** of the Freedom of Information Law of the Republic of Armenia by the national government agencies and local self-government bodies.
- 2. Training** citizens, mass media workers, public servants and local self-government officials, lawyers, and students in exercising their rights by holding seminars to acquaint them with the provisions of the Freedom of Information Law. The Freedom of Information Centre has published several handbooks on applying the Freedom of Information Law, intended for private citizens and nongovernmental organizations, journalists, public servants, government officials, as well as judges, prosecutors, investigators, and defence counsels. The Centre is also organizing jointly with regional TV-stations a talk show on the topic of "The Right of Access to Information," to be shown across the country.
- 3. Conducting a public campaign to expose and make public cases where the right of access to information has been violated**, using the mass media and the Internet. The Centre is publishing a bulletin titled *You Have the Right to Know*, which contains articles on the right of access to information and is the country's only publication in the area of freedom of information.
- 4. Improving FOI law.** The Freedom of Information Centre has drafted two government resolutions: "On the Procedure for a Unified System of Registering, Classifying, and Storing Information at Government Agencies" and "On the Procedure for Charging Payment for Providing Information at Government Agencies." At present, these draft resolutions are in the final review stage, after which they will be forwarded to the Republic of Armenia Government. The Centre has also drafted several amendments to Armenian laws, in order to bring them in line with the Freedom of Information Law.
- 5. Providing legal advice and protecting citizens' rights.** The Freedom of Information Centre has 11 lawyers who operate in all regions of the country. The lawyers provide free legal advice to citizens and organizations, and represent them in court of law whenever necessary. The Centre's lawyers inform citizens of the rights granted them in the Republic of Armenia Constitution and the Freedom of Information Law, help to them formulate their requests for information properly, and act as their lawyers in court proceedings. From March through October 2005, the Centre's lawyers provided Armenia's citizens with more than 400 free consultations in all areas of the country. In 220 cases, our lawyers formulated requests for information in our name or helped private citizens file such requests with various organizations. Since the beginning of 2005, the Centre has brought three lawsuits against central and regional government agencies, and private organizations performing public functions. I have already told you about the case against the Ministry of Health and the Berlin Mother and Child Centre. In the two other cases, suits were brought against the mayors of the cities of Abovyan and Gyumri. Both mayors were sent requests to provide copies of their 2005 budgets, and reports on how they were executed in the first six months of 2005. I shall read you the answer from the mayor of Gyumri, which came in 45 days after he had received our request: "All of the information you require is contained at our website, which is in the development stage." The mayor of Abovyan also broke the law by leaving our request for information completely unanswered. In both cases, the Freedom of Information Centre demands that the perpetrators be charged with abuse of office and compelled to provide the information requested. The Centre helps citizens appeal against unlawful refusals of access to information, and is striving to create judicial precedents in the area of freedom of information in Armenia.

This past year, the Freedom of Information Centre organized its third annual award ceremony for agencies that have observed and for those that have violated the Freedom of Information Law to coincide with the International Anti-Corruption Day observed 10 December.

The following nominations were made:

- For the prize to the private person who has most actively utilized his/her right of access to information in accordance with the Freedom of Information Law;
- For the government organization having the best system for providing requested information;
- For the best website that meets the requirements of the Freedom of Information Law;
- For the best article or television/radio program on freedom of information;
- For the nongovernmental organization making the greatest contribution to exercising the right of access to information;
- For the negative prize to the government organization that is worst in fulfilling its duties in the area of freedom of information.

The winners of the first five categories are to receive a golden key, the symbol of the Freedom of Information Centre. In the final category, the negative prize of a black lock is awarded.

The nominee will be chosen by an independent jury composed of members of local and international organizations, journalists, academics, and other experts in the field of freedom of information. The jury will make its decisions based on monitoring performed in this area by the Freedom of Information Centre, and on the quarterly and annual Black List of officials and organizations that have violated people's right of access to information.

Civil society stands ready to assist the government. We continue, however, to scrutinize the actions of the government, which has proclaimed its commitment to openness and adopted an anticorruption strategy. Our government ought to display political will and implement freedom of information law.

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