



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

## **Comments on the Draft Law “On Making a Supplement to the Republic of Armenia Law on Television and Radio” regarding licensing moratorium<sup>1</sup>**

This report deals with a proposal to supplement Republic of Armenia Law on Television and Radio by adding the following Article:

*ARTICLE 1. In Article 59 of the RA Law on Television and Radio (9 October 2000, HO-97, hereinafter referred to as Law) add a new paragraph with the following contents:*

*"Competitions for licensing of television and radio broadcasting shall not be announced until 20 July 2010. TV companies having license that expires before 21 January 2011 may submit an application for extending the validity period of the license to the National Commission. The validity period of the license is extended for the claimed period but not longer than 21 January 2011".*

*ARTICLE 2. This Law becomes effective from the 10<sup>th</sup> day following its official promulgation.*

### Background

This supplement to the Law on Television and Radio, developed by the Armenian Ministry of Economy, was adopted in an extraordinary session of the Parliament in first, second and third readings in early September without any prior public discussion and consultation. This has received strong criticism from local media and NGOs that feel that the moratorium on new licences is especially aimed at preventing independent broadcasters from gaining a licence. In the Council of Europe Parliamentary Assembly Resolution 1620 (2008) from June 2008 Armenia is urged to ensure “open, fair and transparent licensing procedure”, especially against the background of a decision of the European Court of Human Rights, upholding an application of an independent TV station critical of the Government, which controversially lost its broadcast license in 2002. Independent media and NGOs see the moratorium as yet another way to distort an open and fair licensing procedure, using the digitalisation procedure as an excuse.

The Law on Television and Radio does not include any provisions on digitalisation. This supplement does not introduce such rules, but takes a first step in the digitalisation process. However, there is a danger that the broadcasting landscape in Armenia is not ready for this step as there is a lack of plurality and diversity.

### Digitalisation

The time for starting digitalisation is basically up to each country, within the rules set by the International Telecommunications Union (ITU) relating to the frequency spectrum. Such rules entail that even if it is nominally for each country to decide if and when to digitalise, at

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some point this change must happen. In the EU there is no common switch-over date but a goal of switch-over by at least 2012. The views expressed by civil society and by the authorities on the timing for Armenia can be seen as conflicting opinions about which it is not possible to say what is best, without a careful analysis of the specific conditions in Armenia.

In any case preparations should be made as early as possible, in consultation with those involved, including the broadcasting sector and civil society. A moratorium may not be the best first step. Digitalisation should not be allowed to reduce diversity and plurality and should never be used as an excuse to limit free and independent broadcasting. If the broadcasting landscape in a country is not pluralistic and diverse, it would be better to delay digitalisation and undertake other reforms first.

#### Reasons for a moratorium

The justification for the amendment is that the Republic of Armenia is preparing for digital radio- and TV-broadcasting system in the territory of Armenia.. It is in line with international practice to have a period of moratorium for issuing analogue licences. How this is designed varies between countries, as the way and the timetable how to digitalise varies.

The reason it is useful to have a moratorium is that it is very expensive to have parallel analogue and digital broadcasting. If existing analogue licences have to be terminated before their time of expiry (because analogue broadcasting is switched-off) several legal issues may arise like the question of legitimate expectations. Licences cannot just be terminated early without consideration for the interests of broadcasters that have made investments and counted on a certain business period. It is therefore better to ensure over time that the change is introduced gradually, for which a moratorium at some point may be needed.

#### Switch-over from analogue to digital

One key issue in the switch-over process is frequency management. As the same frequency spectrum is used for digital and analogue the digitalisation plan, the law and the work of the regulator need to set out how to handle the transfer. A moratorium on new licences for analogue may be one step in the process, but this should not be introduced if the broadcasting landscape is not diverse and pluralistic. In countries that have completed all or part of the digitalisation process, existing broadcasters have been given preference for the digital content licences. There is thus a risk that the initial stages of digitalisation will mean less choice so the broadcasters that are included in the early platforms, especially the free platforms, will be very important. The public service broadcaster must have a place on such a platform but also the other channels given space in the digital broadcasting system must be selected to allow plurality and diversity.

#### Regulatory principles

Legitimate expectations and principles of good administration including legal certainty must be considered by the regulator. Amendments to conditions as well as cancellation of given authorisations must always be made in objectively justified manner and proportionately. Those concerned must be given reasonable time to adjust and shall also be given a chance to express their views on changes. In the process of digitalisation the regulator needs to include requirements of digitalisation in licences for some time before the switch-over, so that broadcasters can start preparing for this. This typically happens some 5 years or more before the actual change (e.g. in the UK where a special scheme was also established to help with the switch-over).

## Conclusions

The main problem with the amendment to the law is the manner how it was passed, without consultations. This is a serious problem as in the introduction of a new process, it is very important to involve the sector. It is correct that a moratorium may at some point be introduced. This is because digital and analogue uses the same frequencies and at the switch-over all broadcasters must be ready. It is very expensive to maintain a parallel system for any length of time. Existing stations should normally have the possibility to go digital. As new stations will not be licensed for a certain period, it is very important that there is a pluralistic system when digitalisation is introduced.

The Council of Europe Committee of Ministers Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting sets out a set of principles for member states to apply to the development of digital broadcasting. This mentions media pluralism especially. The Recommendation supports a rapid changeover to digital broadcasting but this should be done while making sure that the interests of the public as well as of all categories of broadcasters are taken into account. In doing so, an appropriate legal framework as well as favourable technical and economic conditions must be provided.

Even if a moratorium will be inevitable, this should not be introduced in such a way as to reduce diversity. The Council of Europe Recommendation specifically mentions the licensing process and that services on offer must be varied.