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MEDIA AND DEMOCRATIZATION PROCESS IN ARMENIA

I SHALL START my presentation with a brief overview of the present-day media legislation of Armenia as one of the fundamental factors of the democratic reforms. What is it we have today?

Firstly, this is the Armenian Law “On Mass Communication”, adopted in December 2003. The almost two-year struggle of the journalistic profession, the joint effort of the local and international community and further constructive cooperation with the representatives of the executive and legislative branches of power enabled us to have a quite liberal law instead of the restrictive and regressive document proposed initially. It abolished the media registration institute that used to become a serious obstacle for opposition press. It stipulates a much stronger protection of information sources than in the previous law. The provision on the obligations of the journalist was removed from the document - the community finally managed to convey to the senior officials that this is a task for the professional, ethical, rather than legal regulation - as well as provisions creating unequal conditions for foreign media and journalists.

Secondly, we have Armenian Law “On Freedom of Information”, adopted in September 2003, which, also after the continuous cooperation of professional NGOs and MPs, became quite progressive and set a good basis for the realization of the right of access to official information for citizens.

Thirdly, it is due to the insistent appeals of local, also journalistic, and international organizations to Armenian authorities that the amendments to the Armenian Criminal Code, adopted in June 2004, significantly softened the punishment for libel and insult. And while defamation was not decriminalized despite the insistence of the public, the new amendments minimize the possibility of criminal prosecution of media and journalists for libel and insult.

This idyllic picture is spoilt by the Armenian Law “On Television and Radio”, adopted in October 2000 contrary to the protests of the broadcasters and journalistic associations. The fears voiced then to the effect that the provisions of the law endanger the existence of independent broadcast media became a reality: the most powerful lever of influencing the minds and feelings of people, the television, is actually fully controlled by the authorities. The ten attempts of “A1+” TV company to go back on TV, or at least, radio air fell flat. The company was deprived of air in April 2002 when the National Commission on Television and Radio refused to issue it a broadcast license. The National Commission on Television and Radio - the body regulating the activities of private broadcasters established in accordance with the Law “On Television and Radio” - was a good teacher: the lesson of how one should behave not to lose air is learned today by all broadcasters. The amendments to the law, adopted subsequently and referring, in particular, to the procedure of appointing members of National Commission on Television and Radio and the Council of Public TV and Radio Company did not change anything. The competitions of 2005 to fill in vacancies in these regulatory bodies showed how early the enthusiasm of co-rapporteurs of the PACE Monitoring Committee Jerzy Jaskernia and Rene Andre was, when in their report on Armenia’s honoring of its commitments to the Council of Europe (CE) (heard at a PACE session on 7 October 2004) they qualified these amendments as contributing to the creation of “fair conditions for awarding broadcast licenses to televisions”. The authorities once more managed “to kill two birds with one stone”: retaining the previous procedure for forming regulatory bodies (i.e., the levers for keeping them under control) to report to CE the fulfillment of actions enhancing the transparency and independence of these bodies (reminding one of the transparent ballot boxes at elections of 2003 that did not make the elections any more transparent and fair).

THE LATEST and most topical imitation of democratic procedures related to media occurs today: on 27 November a referendum on draft amendments to Armenian Constitution will be held.

In the document presented to the plebiscite certain attention was paid to broadcast media, too. In particular, Article 83.2 stipulates the creation of some “independent regulatory body” to “ensure freedom, independence and diversity of broadcast mass media”. While still being considered by the parliament this provision was the main subject for concern of seven journalistic associations of Armenia, including Yerevan Press Club (YPC). The professional associations not only issued joint statements voicing their stance on the provisions of the draft referring to the freedom of expression, but also presented its proposals to the Armenian National Assembly and Venice Commission. The essence of these proposals was as follows:

a) Since the constitutional reform stipulated the admission of law-makers to the formation of a regulatory body only in certain spheres (although it would be more correct to prescribe in the Main Law the participation of the Armenian National Assembly in the formation of independent structures, unaffiliated with the executive, on permanent or temporary basis to regulate spheres of particular public importance), the procedure must be reversed from head to feet: the members of the body, regulating the activities of broadcast media, must be proposed by the National Assembly and approved by the President of the country. In this issue the authors of the draft decided to make concessions, which, however, were very partial. The initial provision on nominating the members of the regulatory body by the President and their approval by the Parliament was replaced by a new one: half of the members of this body are elected by the Parliament, and the other half is appointed by the President for six years' term of service. The drawbacks of this option are obvious: in any case the President will always have an "obedient majority" in the regulatory body.

b) The second point, insisted on by journalists, even if the 50/50 option is accepted: the procedure of formation must refer to not one, but to two bodies, regulating both public and private broadcasting (i.e., the Council of Public TV and Radio Company and National Commission on Television and Radio), since all documents of the Council of Europe, on the commitments of the country to CE, refer to not the “body”, but to the “bodies”, regulating the broadcasting in Armenia. This proposal was rejected. Moreover, the legislators ignored also the last compromise proposal of the journalistic community - since the Constitution names one independent body, it should specifically provide that this body is to regulate both private and public broadcasting. Thus, it became clear that the “independent body” established is intended only to regulate the activities of private TV channels and the Public TV and Radio Company remains the ground of the President of the country, who forms its Council on his own.

In other words, the authors of the draft made concessions to journalistic associations only by introducing certain changes of editorial nature, turning down the most important issues.

THE RATIONALE of Armenian authorities' behavior, similar to that of any authority in any, even the most democratic state, is quite clear: they always aspire to retain control over the spheres of public importance (their success and the role of counteraction by the civil society are a subject of a separate discussion). The stance of the CE Venice Commission that gave an overall approval to the draft provision above is most perplexing. This approval is hardly in the line with the context of CE demands on Armenia's honoring of its commitments, in particular, on transforming state broadcasting into public. Yet, it is not a secret for anyone, including international experts, that under the present procedure for forming the Council of Public TV and Radio Company we have a pure name change instead of transformation of state TV into public.

As to the National Commission on Television and Radio, the reports of the CE monitoring groups repeatedly stressed the need for soonest change of its members, the main justification being that the National Commission had discredited itself by the ousting of “A1+” TV company from air. However, the Venice Commission did not object to the circumstance that the transitional provisions

of constitutional amendments enable the present National Commission members to continue their work until their term of service officially expires. That is, in accordance with the new procedures, the composition of the National Commission can only change in six years. Therefore, the danger of not getting or losing a license will still be pending upon broadcasters, making them “quiet”, particularly, during election races of 2007-2008.

The attitude of the representatives of various international organizations is strange not only due to the absence of a principal approach regarding certain provisions of the constitutional reform, but also due to the open promotion for the draft amendments to the Main Law, introduced at a referendum. In late October in Yerevan a seminar was held by the CE, during which the representatives of Armenian media were told about the CE standards of covering election campaigns and referenda. During the discussion the Armenian journalists inquired whether the CE experts do not see a controversy in the fact that the media, on the one hand, are called to provide balanced and impartial referendum campaign coverage, and on the other - the senior officials of the international structures and diplomatic missions active in Armenia stress the need for the society to approve the constitutional amendments in public, since otherwise the consequences may be most adverse? The expert of Venice Commission Owen Masters answered that the experts taking part in the seminar are not authorized to comment on such questions, and the purpose of their visit lies in presenting professional and technical aspects of campaign coverage to Armenian media.

SUMMING UP, let us try and ask again: what is it we have?

We have rather democratic and progressive media legislation. We have draft amendments to the Constitution, which are definitely a step ahead. So why is it the freedom of expression and media deteriorates with every year? Why, according to the research of “Freedom House” international organization, Armenian media for the third year on end are classed as “not free”, having first got into this category in 2002?

At the first South Caucasus media conference, organized by OSCE in Tbilisi last autumn, my colleague, the YPC President Boris Navasardian, when speaking about the situation of Armenian media, noted that their face today is defined by oligarchic groups. The owners of most of national and Yerevan TV channels of political influence are major entrepreneurs who are somehow related to the authorities. The Public TV and Radio Company is governed by the Council, appointed personally and solely by the President of the country. Among the advertisers and advertising agencies the entrepreneurs that are loyal to authorities are predominant again. A strong system is built up where de jure quite democratic institutes are created (such as institutions, laws, procedures, etc.), and de facto a total control and unvoiced censorship over the main channels of influencing public opinion is established.

Since 1996 Yerevan Press Club issues annual reports on freedom of expression in Armenia. The YPC report in 2001 was titled “Journalists Learn to Fight for Their Rights”. The reason for this title was the number of litigations, two of which at that time were unprecedented in the history of independent Armenian journalism. Besides, in 2001 the journalistic community for the first time united its efforts to protect its interests. 2002 was the year that ended by an unprecedented assassination of a journalist, the Chairman of the Council of Public TV and Radio Tigran Naghdalian. 2003 for journalists and media of the country was a year of elections and litigations. 2004 was the year of attacks on journalists: an unprecedented number of assaults on the representatives of “fourth estate” to impede their professional activities was recorded.

In 2005 the cases of physical and other repression of journalists and media reduced drastically. It looks like a paradox: on the one hand, the freedom of expression and media situation deteriorates, and on the other - there are fewer cases of actual harassment of journalists. The explanation for this is as follows: the almost complete subjugation of media to authorities’ control today bore its fruit - there is nothing to “beat” and “harass” them for.

I WILL NOW RETURN to event number one of the country and the media - the constitutional referendum.

The coverage of this campaign reminded one of the Constitution referendum in July 1995, when there was nothing at least similar to objective and impartial analysis. The Armenian media at that time were divided into two camps: the official ones sang praise to the Constitution and openly promoted it; the opposition press was vehemently criticizing it.

One can also remember the events of two years ago, namely, the referendum on introducing amendments to the Armenian Constitution on 25 May 2003, held simultaneously with elections to the Armenian National Assembly. The draft amendments introduced to the referendum were rejected, having not gained the sufficient number of votes. It failed to gain these votes because the authorities, and therefore, the media, did not display any interest in its conductance, and the voters did not really comprehend what is being proposed and why.

This time not only media but the whole country was divided into two camps: the “yes” (“ayo”) camp and “no” (“voch”) camp. The headquarters of the supporters and opponents of constitutional amendments were also officially named “Yes” and “No”. The web-site launched to inform the voters about the document introduced to the ballot had www.ayo.am as URL. Some representatives of the opposition vowed not to say “yes” in public for their words not to be misunderstood or edited by broadcast media.

On November 5-25 YPC monitored the media coverage of the referendum on amendments to the Constitution. The monitoring focused on the main newscasts and the main commenting programs of 4 national TV companies as well as 7 national newspapers. Proceeding from the research findings for the first week (November 5-12) one can state that all the TV companies and four out of seven newspapers studied belong to the “yes” camp. A resolute “no” is said by one newspaper, a simple “no” - by the second, while the third publication is more inclined towards “no”. At the same time the most frequent coverage on pages and on air is given to the general subjects related to constitutional amendments as well as to issues of organizing and administering the referendum. These are followed by the authorities of the President and the National Assembly, dual citizenship, the rights and freedoms of citizens as well as the independence of the judiciary. Despite the unilateral focus of most media, many of them try to “keep face” and provide an opportunity for both the supporters and opponents of the amendments to speak. The Public Television even launched a new program, “Crossroads”, the guests of which were interchangeably the representatives of both camps - “yes” and “no”.

The nearest future will show, how successful the media were in their primary mission: to help the citizens to understand and objectively assess the importance of the constitutional reform, the essence of amendments proposed and thus to make an informed choice. Unless this happens, we will have what we have had from one election campaign to another: voting not so much for better or worse Constitution, but rather for or against present authorities.

In this context a joke can be recalled.

The wife sees a poster in the street and suggest to her husband:

- Let us go and listen to Mozart’s concerto.

- Why should we? It clearly says that the concerto is not for us, but for flute and orchestra, the husband replies.

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Yerevan Press Club, Armenia