



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

**ADDENDUM
TO THE COMMENTS ON THE AMENDMENTS TO THE
LAW OF THE REPUBLIC OF ARMENIA ON
BROADCASTING and
TO THE REVIEW ON THE CONCEPT PAPER ON
MIGRATING TO DIGITAL RADIO AND TV
BROADCASTING SYSTEM
MADE EARLIER (IN MAY AND MARCH 2010) BY THE
OSCE FOM EXPERTS**

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10 June 2010

The broadcasting law under this analysis is titled “Law of the Republic of Armenia “On making amendments and supplements to the Law of the Republic of Armenia “On television and radio”” (hereinafter – the Law) adopted by the National Assembly of the Republic of Armenia in second reading on 10 June 2010.

Main changes after the 1st reading:

1. 1) Article 22 (“Impermissibility of Abuse of Television-Radio Programmes”) of the Law provides a long list of programmes and their elements that if broadcast lead to a termination of the term of the license. Now it takes place not by outright discretionary powers of the NTRC but in a court procedure based on the application from NCTR after a single violation of Art. 22 (as stipulated in Art. 61). We believe that this change is not sufficient as this provision anyway leads to self-censorship of journalists and limitations of freedom of the media. The court should follow what the law says and the law in this regard is far below the OSCE standards of democracy.
- 2) While it is a positive step that Article 22 of the Law has been shortened and now excludes “publicizing a state or other secret protected by law... and broadcasting programmes containing worship of violence and cruelty, degrading human dignity, disparaging the family, contributing to violations of law”, at the same time the provisions of the article still include, for example, “defaming or violating the rights of others and the presumption of innocence”. We know of no country in the modern democratic world where such offence as defamation leads to a forced closure of a broadcaster on the initiative of an administrative body.
- 3) The same is true for violating of such “rights of others” as intrusion into private life, copyright violations: these are weak grounds for such a measure as withdrawal of the licence to broadcast.
- 4) A provision that punishes in the same manner for “spreading calls for criminally punishable acts or acts prohibited by legislation” is extremely wide making calls for any offence (like illegal parking) basically a capital crime for broadcasters.
- 5) Similar punishment for “disseminating pornography” raises even more questions. According to para 1 of Article 263 of the Criminal Code of Armenia only “illegal manufacture, sale as well as, dissemination of pornographic materials or items, as well as, printed publications, films and videos, images or other pornographic objects, and advertising”¹ is a crime in the country. Thus the wording of the Code presumes there is also “legal pornography” alongside “illegal pornography”. Unless there is a clear definition in the current legislation of Armenia of what is “illegal pornography” (like in narrow cases of para 2 of the same Art 263) all other pornography is legal. That makes such an outright ban as in the Law legally dubious.
- 6) The ban of “broadcasting programmes containing or propagating worship of violence and cruelty” is too broad for practical use in the courtroom and again makes room for arbitrary decisions.

¹ See <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>

7) The same is true of violation of presumption of innocence. A constitutional dispute is not a subject of this review, but in our strong view Article 21 of the Constitution of the Republic of Armenia which stipulates (in part 1) that “Everyone charged with a criminal offence shall be presumed innocent until proved guilty by the court judgment lawfully entered into force as prescribed by law” cannot relate to the mass media sphere whatsoever.² This constitutional definition of presumption of innocence contained here does not include journalists or the media as they cannot “charge” anyone in a legal sense of this word (and there is no doubt that the Constitution is a legal document). In any case the provision of Art. 22 of the Law opens door to arbitrary application of the notion of presumption of innocence with grave effects for the media.

Recommendation:

Our recommendation stands as before:

- *Eliminate possibility of arbitrary abolishment of the freedom of expression and freedom of the mass media in case of violations by broadcasters of Article 22.*
- *That should involve elimination of a possibility of self-censorship of the journalists in view of drastic purges of the broadcasters at large for violations of Art. 22 such as defaming or violating the rights of others, etc.*

2. We welcome the installment of the provision that the National Commission “once a year publishes the full list of air frequencies having as a basis the compiled and provided on regular basis by an authorized by the Republic of Armenia Government body frequency list for broadcasting TV/Radio programmes in the territory of the Republic of Armenia” (Art. 36 para 6). In this way our recommendation *to keep the current obligations of the National Commission to make public the frequency plan* has been fulfilled.
3. We welcome that Article 49 of the Law now includes the responsibility of the National Council to take into account in the licensing process the ability of an applicant to promote pluralism. At the same time our recommendation *to “reinstall responsibility on the NCTR to promote diversity of opinion on the airwaves”* instead had to do with another part of the Law – Article 36 (“Functions of the National Commission”).
4. In our original recommendation it was said: *Reinstall provision that the National Commission is obliged to properly explain its decision to reject an application for a broadcast license.* After debate the following wording of the Law was adopted: *“The decision of the National Commission shall be properly justified and reasoned. The National Commission shall ensure the publicity of its decision”*. We believe that this means that the National Commission shall properly justify and provide reasons for its

² See e.g. (in English) Recommendation by the Judicial Chamber for Information Disputes under the President of the Russian Federation No. 3 (10), dated 24 December 1997 “On the Application of the Principle of Presumption of Innocence in Journalists’ Activity” (on an inquiry from the Mass Media Law and Policy Centre) at http://medialaw.ru/e_pages/laws/russian/jcr-10-97.htm

decisions on both selecting a licensee, and refusing a license. If so, this is a welcome change and will conform to the position of the European Court of Human Rights in a licensing-related case against Armenia:

*“The Court considers that a licensing procedure whereby the licensing authority gives no reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression.”*³

5. Article 8 provides now that the “broadcast of domestically produced programmes by television-radio companies on one television (radio) channel may not be less than 55 per cent of the overall monthly airtime”. Earlier it read: “may not be less than 65 per cent”. This reduction from 65 to 55 per cent would ease an economic strain on broadcasters to produce (order production) of domestic programmes and is welcome, but the measure is still extreme. Even the West European countries, where economy (including economy of broadcasting) is stronger than that in Armenia, the law does not demand more than 50 per cent of domestic (or rather, European-produced) programmes, and even that aim is so far unattainable in countries like Greece and Spain. No wonder the European Convention on Transfrontier Television (para 1 of Article 10: *Cultural objectives*) says in this regard:

“Each transmitting Party shall ensure, where practicable (sic!) and by appropriate means, that a broadcaster within its jurisdiction reserves for European works a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and tele-shopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.”

Recommendation:

- *Consider abolishment of the quota of domestically produced programmes for private broadcasters.*

6. A positive step was reformulating para 1 of Article 14 of the Law so that the notion of “sponsorship” is now defined exactly as in the European Convention on Transfrontier Television (para h of Article 2). In general this article of the Law follows the Convention. At the same time some important provisions of the Convention are not included: for example the Law does not provide that sponsored programmes shall not encourage the sale, purchase or rental of the products or services of the sponsor or a third party, in

³ See point 68 of the Judgment on the case of Meltex Ltd and Mesrop Movsesyan v. Armenia (*Application no. 32283/04*) on 17 June 2008 at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&Action=html&highlight=ARMENIA%20|%2010&sessionid=67430&skin=hudoc-en>

particular by making special promotional references to those products or services in such programmes (as in the Convention, para 3 of Art. 17).

Recommendation:

- *Implement sponsorship and advertising rules common for the European countries and specified in the Convention on Transfrontier Television.*
- *Consider signing and ratifying the European Convention on Transfrontier Television.⁴*

Main points that were not dealt with:

Some earlier recommendations were totally ignored and/or related to “future law” or “future amendments”. These include recommendations to:

- *Provide clear distinctions of regulating satellite, mobile, Internet-provided broadcasting and non-linear audiovisual media services.*
- *Lay legal grounds for the establishment of non-state operators of digital broadcasting.*
- *Be specific in relation to the number or thematic direction of radio programmes on national and capital multiplexes.*
- *Change the system of financing Public Television and Radio and that of the National Commission on Television and Radio for an automatic guarantee of their financial independence from the state.*
- *Reform the system of selecting and appointing members of the Council for Public Television and Radio to provide for a possibility of a pluralistic public broadcasting.*

For example, para 13 of Article 62 of the Law now provides that “in order to create a private network of digital broadcasting by legal persons starting from 1 January 2015, the procedure and terms for multiplexer licencing will be established by law”. When these important terms will be established by law or why their adoption was delayed is not specified in the draft or in the Substantiating Memo.

While it is understood that legal reform cannot be made in several days and the Government is in a hurry to have the draft law adopted before expiration of the moratorium, we would like to point out that earlier recommendations were not compiled in a chaotic but rather in a complex way and put to the single aim of harmonisation of the draft law with the OSCE standards. Thus singling out some recommendations makes no sense.

For example, there is no point in putting the public broadcaster under the sole authority of the Council (as was done according to our previous recommendation) unless the Council itself is reformed in a democratic way. Therefore we urge the authorities to deal with all these issues together and if delay in reforming the Law is unavoidable adopt a policy paper that will envision such changes in concrete and near future.

⁴ See: <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=132&CM=1&DF=&CL=ENG> It should be noted in this regard that while several West European countries have not signed the Convention they joined its parallel instrument in the European Union, currently - the Audiovisual Media Services Directive.

Ignored were also almost all recommendations put forward in the review on the Concept Paper on migrating to digital radio and TV broadcasting system made by Dr. Katrin Nyman-Metcalf and Dr. Andrei Richter in March 2010.⁵ At the same time it is the Concept Paper that was supposed to lay basic grounds for the Law.

Recommendation:

- *Adopt a policy paper that will envision a timetable for other changes in the broadcasting law in concrete and near future.*
- *Allow a working group that would include representatives of journalistic non-governmental organizations, parliamentarians and other stakeholders to work on a fundamental revision of the Law, fully taking into account the remarks and suggestions of the working group members, as well as the recommendations of international organizations and their experts made in relation to both the current Law and the Concept Paper on migrating to digital radio and TV broadcasting system.*

Conclusion

The Office of the OSCE Representative on Freedom of the Media has consistently supported the preparation of a liberal law on broadcasting in Armenia, which would envisage participation by non-governmental and international organizations in its drafting and would facilitate promotion of freedom of expression and freedom of the media in Armenia.

The proposed version of the Law, however, raises doubts that the appeals of the OSCE Representative on Freedom of the Media concerning broadcasting legislation, have been adequately reflected in its draft.

The Office of the OSCE Representative on Freedom of the Media urges the National Assembly to allow a working group that includes representatives of journalistic non-governmental organizations, opposition parliamentarians and other stakeholders to work on a fundamental revision of the Law, fully taking into account the remarks and suggestions of the working group members, as well as the recommendations of international organizations and their experts. The Law should serve not the technical conditions of digitalization, nor the business or political interests, but should provide for a freedom of expression and freedom of the media in the interests of the population of Armenia.

⁵ See http://www.osce.org/documents/html/pdftohtml/43565_en.pdf.html