

Quarterly Report On the Situation with Freedom of Speech and Violations of Rights of Journalists and Media in Armenia (January – March 2010)

Starting from 2010, the Committee to Protect Freedom of Expression will provide interim quarterly reports, in addition to annual reports, on the situation with freedom of speech, including the following:

1. Legislation on the freedom of speech and media, amendments to such legislation and related processes;
2. The economic environment and its influence on the media;
3. The political environment and its influence on the media;
4. Violations of rights of the media and journalists.

1. Legislation on the Freedom of Speech and Media

The beginning of 2010 was marked by some legal initiatives on the freedom of speech and media, particularly:

On February 4, the National Commission on Television and Radio posted on its website a draft of “criteria for erotic TV and radio programs, horror films and films depicting violence, as well as programs that have a negative influence on the health, mental and physical development of teenagers” for discussions and suggestions. After making some amendments, the commission approved the criteria’s on February 15. The decision was published in the 2nd issue of the Bulletin of RA Normative Acts and went into effect on March 12. According to experts, the document is still extremely raw, despite the amendments; it leaves room for arbitrary and subjective decisions, because the criteria are not clear and measurable.

On February 24, the National Assembly of the Republic of Armenia voted against the draft amendments in the RA Law on Television and Radio, authored by Anahit Bakhshyan and Armen Martirosyan from the “Zharangutyun” [Heritage] faction. The draft intended to repeal the September 10, 2008 amendments to the law that froze all competitions for television and radio frequencies until July 20, 2010. Let us remind that, according to an overwhelming number of experts, the main objective of the 2008 amendment was to deprive “A1+” TV Company of air for two more years.

On March 17, the RA National Assembly adopted amendments to the RA Criminal Procedure Code in the second and final reading. According to the new amendments, a new paragraph was added to Article 16, Part 2, with the goal of removing a contradiction between the Criminal Procedure Code and the RA Law on Mass Media. Hereafter, if a court requires a journalist or a media outlet to disclose their source of information in accordance with Article 5 of the RA Law on Mass Media, then this may be done in a closed court hearing.

On the same day, on March 17, the RA National Assembly adopted amendments to the RA Criminal Procedure Code in the second and final reading. The new amendments toughened the penalty for hindering the professional activities of journalists (Article 164) by increasing the fine from 50-150 times the minimal wage to 200-400 times the minimal wage. A new provision was added, according to which the same actions are punishable by 3-7 years of imprisonment if “committed with violence or threat of violence that is dangerous for the journalist’s or his relative’s life or health.

On March 18, the RA National Assembly adopted amendments to the RA Civil Code, the RA Criminal Code and the RA Criminal Procedure Code in the first reading. The amendments repeal Article 135 (“Libel”) and Article 136 (“Insult”) of the RA Criminal Code. Instead, the RA Civil Code now describes procedures and conditions for compensation of damages to a person’s honor, dignity or business reputation. The drafts of these amendments have been discussed since 2009 and have been criticized by media experts and the journalistic community. Having expressed their satisfaction with the decriminalization of libel and insult, the experts also noted that the draft amendments to the RA Civil Code do not clearly define libel and insult, fail to provide mechanisms for determining the size of moral compensation in a way that avoids arbitrariness. Therefore, if passed, the package of amendments can be dangerous not only for the media, but also for the freedom of speech in general.

To summarize, we can conclude that the legal initiatives in the sphere of freedom of speech and media in the first quarter of 2010 had both positive and negative trends. Some experts tend to think that the positive amendment made in Article 164 of the RA Criminal Code was the “carrot” for the media, which was followed by the “stick” in the form of amendments to the RA Civil Code, the RA Criminal Code and the RA Criminal Procedure Code.

2. The Economic Conditions

When assessing the economic environment’s impact on the media, international human rights organizations take into account, in particular, how much of the media belongs to or is controlled by the government, and how that impacts pluralism. Is media ownership transparent? Does the state or other entities control the media through advertisement or financial assistance? Is media ownership highly centralized and how does it affect the diversity of contents? Does the country’s economic situation increase the media’s dependence on the state, political parties, big businesses or other influential political entities?

In order to avoid statements not backed by specific facts, the Committee to Protect Freedom of Expression is going to refrain from answering these and other related questions during this quarter. This kind of assessment will be given when the Committee carries out a full study in near future. In this report, we will only note that that the print media have published their annual reports by March 31, as required by Article 12 of the RA Law on Mass Media, and that was the only thing they did to ensure transparency of their sources of funding.

In the first quarter, a statement by GALA TV Company, issued on **March 23**, evidences the negative impact of the economic situation on the media. The statement reads as follows:

“As a result of direct pressure by certain state powers, GALA TV Company’s advertisers are reluctant to place ads on our air since mid-February. In the last month, some 26 advertisers have pulled their ads off the air. At the moment, the TV company has only three advertisers.” The statement also announced a ten-fold decrease in the price of ads because of the pressures, down to a mere symbolic 960 AMD. On March 25, the company announced a special promotion, according to which the first advertiser will be able to place its ads for free for ten days and will get a bottle of «**Мужское достоинство**» [Masculine Dignity] vodka.

Judging from these and other reports, received from other media outlets (particularly, certain news websites), claiming that businesses are reluctant to place ads with them or they even dissolve their old contracts, one can assume that the political authorities and their related businesses are using economic levers to put pressure on media outlets that are not suitable for them.

3. The political situation and its influence

In its reports from previous years, the Committee to Protect Freedom of Expression had stated that the violation of rights of journalists and media became more active as political tensions increased. This view was borne out by an incident that took place in electoral district No. 10 in Yerevan, during supplementary elections to the National Assembly on January 10.

At the request of the precinct electoral commission head Gagik Baghdasaryan, police officers and some unknown individuals hindered the work of journalists, including Radio Liberty correspondent Anush Martirosyan, in precinct No. 10/19, at about 10:30. A skirmish took place. Photojournalist Gagik Shamshian received some blows, and unknown individuals tried to break Radio Liberty’s microphone. The head of the commission illegally demanded journalists to show their passports, in addition to their press IDs. In the same precinct, some hindrances were created also for Hayk Gevorgian, acting editor-in-chief of “Haykakan Zhamanak” daily, and Gohar Vezirian, correspondent of “Chorrorrd Inknishkhanutiun” newspaper. Some unknown individuals forced both of them out of the polling station. According to a statement issued by the RA prosecutor’s office, on January 13, pursuant to the RA Prosecutor General’s instructions, inquest materials on the violations in precinct 10/19 were sent to the RA Special Investigative Service for opening a criminal case and carrying out an investigation. The same source informed on January 15 that the RA Special Investigative Service opened a criminal case on a group of individuals using force to hinder the activities of election participants in precinct 10/19. Charges were brought under Article 149, Part 2(3) and (5) of the RA Criminal Code. However, the RA Special Investigative Service reported later that the case was dismissed because of lack of evidence.

On election day, the work of Marine Kharatyan, the journalist from “Zhamanak” newspaper, was also hindered. The head of the precinct electoral commission in precinct 10/24 demanded that she show not only her press ID, but also her passport. The journalist refused to provide her passport, saying no such thing was required by the RA Electoral Code. Afterwards, the head of the commission and other members tried to remove the journalist from the polling station. Nevertheless, after getting acquainted with the relevant provision of the law, the head of the commission finally allowed the journalist to carry out her professional duties.

The work of Kristine Khanumyan from the same newspaper was also hindered in precinct 10/14. The main hindrance was an observer from the “Free Society Institute,” who later threatened the journalist that “he will break in her head, break her phone and cut off her ears.”

The culprits were never identified and no one was prosecuted in any of these cases.

Another example of the influence of political environment on the activities of the media is the fact that none of the Armenian TV companies covered the supplementary elections to the RA National Assembly. This can be regarded as a covert censorship of television news.

4. Violation of rights of journalists and the media

Unlike January, February and March 2009, the first quarter of 2010 was unfavorable in terms of pressure and, especially, physical violence against journalists. As already mentioned, this had to do with supplementary elections to the National Assembly in electoral district No. 10, on January 10. One of the candidates running for the National Assembly was Nikol Pashinyan, the editor-in-chief of “Haykakan Zhamanak”, who is currently in detention.

Below is a comparison of violations that had occurred in the first quarters of 2009 and 2010:

Types of violations / Year	2009 1 st quarter	2010 1 st quarter
Physical violence against journalists	3	5
Pressure on the media and media staff	8	4
Violation of the right to seek and impart information	2	6

Physical violence against journalists

Besides the incident on January 10, one more fact of violence was recorded, and a new development of the incident, which had happened in previous year.

The Chief of Police Alik Sargsyan announced at a press conference on **February 10** that the criminal case about the assault on the “Shant” TV Company commentator Nver Mnatsakanyan was closed. Let us remind that on May 6, 2009, two unknown individuals followed Nver Mnatsakanyan to his house, attacked him and threw him to the ground, after which they fled the scene. Nver Mnatsakanyan is confident that the attackers have links with “Grand Candy” company.

An incident involving the photo correspondent of “Aravot” and “Chorrord Ishkhanutyun” newspapers Gagik Shamshyan occurred in the morning of **February 24**, in front of the RA Prosecutor’s Office building. The journalist was photographing various prosecutors and high-ranking officials gathering for the Prosecutors’ Collegium meeting. A 30 years old young man told Shamshyan to stop photographing, after which he started cursing the reporter and striking him right in front of the Prosecutor’s office. Gagik Shamshyan received injuries requiring medical attention. On the same day, the Committee to Protect Freedom of Expression and partner organizations released a statement condemning the incident, which read, in particular: “...the public may expect that this new case of

violence against a journalist will not be without consequences. If the attacker is again not identified and not prosecuted this time, then we will have all the reasons to believe that the law enforcement bodies are simply refraining from solving such crimes”. The violence was also condemned by the RA Prosecutor’s Office, which released a video recording of the incident on February 26. Pursuant to the journalist’s written complaint, a criminal case was opened under Article 118 (“Beating”) and Article 164 Part 1 (“Hindering the Professional Activities of Journalists) of the RA Criminal Code.

Pressure on the media and media staff

On February 11, the RA service for the enforcement of judicial decisions required the publisher of “Haykakan Zhamanak” daily, “Dareskizb” LLC, to pay a penalty of 3 million AMD in order to unfreeze its bank accounts and to continue the publishing of the newspaper. Let us remind that on February 6, 2009, the newspaper published an article titled “The Adventures of Robert’s Son in Dubai.” Levon Kocharyan, the youngest son of the second RA President, filed a complaint with a court, demanding the newspaper to refute the information that was damaging to his honor and dignity. The court of the first instance ruled in favor of the plaintiff and required “Dareskizb” LLC to pay 3.62 million AMD. The court of appeals then reduced that amount to 3 million AMD. The Court of Cassation refused to consider the complaint brought by the newspaper’s publisher and returned it in December 2009. However, even after the penalty was paid, “Dareskizb” LLC’s bank accounts were not freed up. That happened only after the newspaper published a refutation of the aforementioned article on March 3.

On February 19, the Civil Court of Appeal examined the application of the “Ararat” strategic center, appealing against a decision of the court of general jurisdiction of the Kentron and Nork-Marash administrative districts of Yerevan and asking to send the case for new trial. “Ararat” strategic center sued the “Casucasus Institute” foundation. In the law suit, the plaintiff demanded the foundation to refute a Turkish author’s publication denying the genocide in the book called “The Caucasus Neighborhood: Turkey and the South Caucasus”, to prohibit the putting of the word genocide in quotation marks and to compensate for moral damages. The court of general jurisdiction closed the civil case, saying that the aforementioned dispute is not subject to judicial review. With its March 5 decision, the civil court of appeals left the decision of the lower court unchanged.

On February 23, the RA Constitutional Court started the examination of an application by Artak Zeynalyan, Ara Ghazaryan, and Karen Mejlumyan, the lawyers of Meltex” LLC, which is the founder of “A1+” TV Company. The applicants asked the Court to declare Article 204/28, Part 1 of the RA Civil Procedure Code unconstitutional. According to this contested Article, “when reviewing a court decision in light of new evidence, the court has the right ... to uphold the previous court’s decision and to throw out the appeal.”

After the well-known ruling by the European Court of Human Rights and in light of new evidence, “Meltex” LLC asked the RA Court of Cassation to invalidate the February 23 and April 23 rulings of the RA Court of Cassation on decisions by the National Commission on Television and Radio regarding broadcasting licenses for 7 frequencies, to recognize the fact of violation of the right guaranteed under Article 10 of the European Convention on Human Rights and Fundamental Liberties, and to require the NCTR to announce a competition for the above mentioned 7 frequencies in order to restore the situation that existed before the said right was violated. The RA Court of Cassation ruled against the applicants by citing the aforementioned provision in the RA Civil Procedure Code.

On the same day, the Constitutional Court announced its decision, by which it essentially recognized the decision of RA Court of Cassation as unlawful.

On March 18, the RA Civil Court of Appeal started the examination of a lawsuit against “Gind” printing house, filed by the founder of “Chorrord Ishkhanutiun” newspaper, “Ogostos” LLC, and “Koghmaki Andzants M” LLC. Let us remind that the court of general jurisdiction of the Kentron and Nork-Marash administrative districts partially upheld “Gind” printing house’s lawsuit against “Chorrord Ishkhanutiun” newspaper and ruled that “Ogostos” must pay 2.6 million AMD to the printing house. The judge also ruled that the decision to ban the publication of the newspaper would remain in place until this money is paid. On March 25, the Civil Court of Appeal decided to overturn the decision of the lower court and send the case back to the court of general jurisdiction of the Kentron and Nork-Marash administrative districts for new full hearing. Representatives of “Gind” printing house announced their intention to appeal to the RA Court of Cassation.

On March 19, one of the defendants in the case of robbery of the house of Armen Avetisyan, the former head of the RA State Customs Committee, started cursing and threatening the photojournalist Gagik Shamshyan before a hearing in the the court of general jurisdiction of Kentron and Nork-Marash administrative districts. According to Shamshyan, the verbal abuse was picked up and continued by the defendant’s brother, who also threw a lighter in the journalist’s direction. Gagik Shamshyan reported the incident to the Kentron police department. According to the police, the incident is now under investigation.

Violation of the right to seek and impart information

On January 13, some groups of people bought large quantities of the daily issue of “Haykakan Zhamanak” newspaper from newspaper kiosks in different parts of Yerevan. The newspaper reported this incident in its January 14 issue, and accompanied its report with photographs. The newspaper suggested that the incident was prompted by its report on the incident between members of parliament Seyran Saroyan and Levon Sargsyan in “Giani” Club.

On January 27, “Aravot” daily published a photo of the RA state flag by the entrance to the RA police regiment in charge of protecting facilities of special importance. The flag was in a bad shape. The flag was replaced the next day, but a senior inspector of the regiment hindered the work of photojournalist Gagik Shamshyan, who tried to cover the “process”, cursed and threatened him. The journalist reported the incident to the Committee to Protect Freedom of Expression. On February 5, the Committee sent an information request to Major-General A. Zaqaryan, Head of the RA Police Security Unit, regarding this matter. The reply was more than surprising, as it justified the activities of the policeman and blamed the photojournalist for what happened.

On January 29, the RA Administrative Court in Gyumri held the first hearing in the case of “Aravot” daily versus the Marzpet of Shirak. On August 19, 2009, “Aravot” daily sent an e-mail to all 10 Armenian marzpets, requesting information on how they spent the 20 million AMD allocated from the state budget as “other benefits.” The Shirak marzpet failed to respond to the information request. During the January 29 hearing, the respondent’s lawyer, Gegham Baghdasaryan, insisted that the marzpet’s office had not received the e-mail, otherwise they would have responded. The lawyer for “Aravot” daily, Karen Mejlumyan, requested the court to send an e-mail to the marzpetaran’s e-mail address to find out whether it works or not. He also requested to question Aram Zakaryan, the

reporter who had sent the e-mail, and to check his e-mail address to verify if he had sent a request for information to the Shirak marzpetaran on August 19. The court granted both motions by the plaintiff's lawyer, after which the session was adjourned. The February 18 session was also postponed.

On January 29, the court of general jurisdiction of the Kentron and Nork-Marash administrative districts upheld the Freedom of Information Center's claim against "National Center for Technical Security" State Non-Commercial Organization and required the latter to provide the information requested by the FOI Center within five days. Let us remind that on September 17, 2009, the Freedom of Information Center requested the director of "National Center for Technical Security" State Non-Commercial Organization Ashot Petrosyan to provide information about the number of private companies involved in carrying out expertise, that are registered in the Organization's register by August 1, 2009, as well as information about who these companies are registered to. Also requested were the 2008 and 2009 lists of employees of the Organization and their salaries. A month after the court decision was announced, on March 5, 2010, the Freedom of Information Center finally received the complete information from the "National Center for Technical Security" State Non-Commercial Organization in writing.

On February 5, the RA Constitutional Court examined an application from the "Freedom of Information Center" NGO, asking the Court to declare Articles 151 and 152 of the RA Administrative Procedure Code as unconstitutional. Let us remind that in the cases of FOI versus the Nor Nork district municipality and FOI versus the "Yerevan Construction and Investment Projects Implementation Office" State Non-Commercial Organization, the courts had refused to subject officials to administrative sanctions, saying that, under Articles 151 and 152 of the RA Administrative Procedure Code, administrative proceedings may be undertaken only based on claims by officials of such bodies that have the lawful authority to prepare protocols on administrative offenses, while the Freedom of Information Center is not a body or an official with that kind of authority. The RA Constitutional Court ruled that Articles 151 and 152 of the RA Administrative Procedure Code do not contradict the RA Constitution. The Constitutional Court declared that there was a legislative gap in this area. It is necessary for the National Assembly to come up with a relevant legislative initiative in order to amend the law and fill the gap in the area of administrative sanctions.

On February 25, the RA Administrative Court in Vanadzor held the first hearing in the case of "Aravot" daily versus the Marzpet of Lori. On August 19, 2009, "Aravot" daily had sent an e-mail to all 10 Marzpets requesting information on how they spent the 20 million AMD allocated from the state budget as "other benefits." No reply came from the Lori marzpetaran. The first hearing was postponed. It was continued on March 12. The lawyer for "Aravot" daily, Karen Mejlumyan, confirmed the plaintiff's claim. The lawyer for the Lori marzpetaran, Alik Sahakyan, confirmed that they had received the request for information, but claimed that an electronic request cannot be considered a written request. The case is still in trial. The next court session is scheduled for April 9. The Committee to Protect Freedom of Expression will follow the case.

On March 18, the court of general jurisdiction of the Kentron and Nork-Marash communities of Yerevan upheld the FOI Center's claim against the Labor Socialist Party of Armenia. The FOI Center had requested the chairman of the Labor Socialist Party of Armenia, Movses Shahverdyan, to provide copies of the party's 2008 financial report and information about sources of donations in excess of the hundred-fold of the minimum wage set by law.

The request, however, was not answered. The court ordered the Labor Socialist Party of Armenia to provide the complete requested information to FOI Center within 5 days.

Other Events Related to Media Activities

On January 15, the National Commission on Television and Radio decided that TV stations had acted in compliance with the law during the coverage of supplementary elections to the National Assembly in electoral district No. 10. The issue was discussed in the National Commission on Television and Radio based on an application by Ruben Torosyan, the president of the “Geraguyin Khorhurd” parliamentary club. According to Ruben Torosyan, the TV stations “failed to provide information about the campaign and did not announce the price of paid campaign ads, which means that they had decided not to broadcast any campaign-related materials.” Commenting on the decision of National Commission on Television and Radio, Ruben Torosyan said “The NCTR regarded the blatant violations of Article 20 of the Electoral Code and the boycott of elections by television stations to be in compliance with the law.” The Committee to Protect Freedom of Expression maintains that not covering the elections is a form of covert censorship.

On February 9, the court of general jurisdiction of the Arabkir and Kanaqer-Zeytun administrative districts upheld the “32 Production” LLC’s claim to dissolve the company’s contract with Shant TV station and prohibit the broadcast of its “32 Atam” comedy show on “Shant” TV. Late payments by Shant TV in October and November were cited as the reason for dissolving the contract. Shant TV had filed a counter-claim to prohibit the broadcast of “32 Atam” on other TV stations. The lawyer for Shant TV stated that they will appeal the court’s decision.

On February 15, the court of general jurisdiction of the Avan and Nor Nork communities of Yerevan threw out the claim by Radio Hay against Stepan Safaryan, Member of Parliament and leader of the “Heritage” faction. The radio station had asked the court to order Stepan Safaryan to refute the information that “Radio Hay” was carrying out orders by President Serge Sargsyan or the President’s Office while preparing and broadcasting its “Haykakan Andradardz” program. The court found the claim to be groundless. Let us remind that the subject of the court dispute was a public discussion of the Karabakh issue, which then turned into a debate by means of open letters and articles. The debate eventually was taken to a court.

On March 26, the court of general jurisdiction of the Kentron and Nork Marash communities of Yerevan announced its decision on the claim by Zaruhi Postanjian, Member of Parliament. The parliamentarian had appealed a decision by a police investigator to close the criminal case on humiliating and offensive publications against Zaruhi Postanjian in one of the already not published daily newspapers. The court upheld Zaruhi Postanjian’s claim and decided to send the case back to investigative authorities. According to Zaruhi Postanjian, the court made that decision in order to avoid creating a dangerous precedent, because if the court had ruled against her, it would mean a de facto legalization of similar publications against any official or politician.

The report is based on data collected by the Committee to Protect Freedom of Expression, materials found in the electronic newsletter of the Yerevan Press Club and Freedom of Information Center’s website, as well as publications in the media.