

# Press Freedom Situation in Armenia 2019

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In 2019 the RSF's annual World Press Freedom Index showed major improvement in Armenia's ranking by 19 points, the current rating score of Armenia is 61. This breakthrough was essentially due to the elimination of the Government's grip on the media sector, particularly on the broadcast media. Before the change of power in 2018, the central government, especially the President's Office, was directly sending instructions to the media on the editorial lines to be followed when covering the activities of political forces and events. Currently there is larger freedom in discussing and covering political, economic and other news. The number of cases of violence against journalists, as well as infringements into journalistic freedoms is also minimal.

Nevertheless, number of problems remain, some of which have been already addressed within the frames of this conference. Let me point out the following priority issues:

## ***1. Financial transparency of the mass media, disclosure of the real owners of media outlets***

A key priority is the media's financial transparency, taking into account the prevalent decline of public trust towards media, as well as disinformation avalanche - a common concern both for journalists, Government and public at large. The public has the right to know on who stands behind a media outlet. The media should be honest with their audience and unhesitatingly publish the names of their real owners.

Armenia's 4<sup>th</sup> Action Plan within the framework of Open Government Partnership initiative is inclusive of a commitment to ensure the beneficial ownership transparency of all businesses through the creation of an open register. As of 23 April 2019, the National Assembly adopted a legal package on the creation of a beneficial ownership register. It is very important that both the commitment and legal regulations are applicable to all types of businesses without any exception.

What problems should be solved in order to introduce an institute of beneficial owners in the media sector?

- Reliability and accuracy of information - How to be sure that the declared information is accurate and complete? It is necessary to introduce a functional mechanism for information checking, which is one of the principal issues not only in Armenia but also worldwide. In my view the best mechanism is public scrutiny. The journalists and other civil society groups should regularly monitor the declared organizations and upon disclosure of false information, make it known to the public.
- An ongoing challenge is the concern that the disclosure of real owners may threaten the potential funding and that funders may refrain from continuing financing of the media in case of such transparency. A parallel concern is the counter-reaction by the media who fear losing the assistance of their funders. Such issues, I think will be problematic for the media at the beginning only, whereas later more reliable international investors with larger resources will be involved, prioritizing exactly the financial transparency of the media business, functioning in fair and competitive conditions.
- The accountability issue is also essential - The declaration of false data or non-submission of any data should be subject to strict liability. In case of licensed TV and radio companies, suspension of a license might be an option and in repeated instances - depriving of a license. It is necessary to have such legal regulations also in the law on Television and Radio, under the provisions regarding grounds for license suspension or termination, in case the broadcasters' responsibility to submit information on their real owners and any changes thereof to the competent body is not implemented.
- Oversight - This is probably the most painful issue in the media's case, because any attempts of state oversight may eventually contain a danger or a possibility for undue interference. I think here too, the civil society can play major role since the lack of proper scrutiny in this sector may turn the entire process into a mere formality and eventually - a failure.

Let me also note that currently the technical description of the Beneficial Ownership Register is under elaboration and activities are underway for

the introduction of this platform. Thus after the adoption of relevant legal amendments the media can start the process of declaring information about their real owners *voluntarily*.

I am sure that in two years' time we will have the best practice in terms of publicity and transparency of the media's beneficial owners, since both the Government and civil society are committed to achieving this.

**2. Access to information for the media is the second priority I would like to touch upon.** When a journalist does not receive timely and complete information, this creates favorable soil for the spread of disinformation. Proactive publication of information and effective work with the media will lead to the decrease of disinformation. Our organization alone receives 10 complaints a day from journalists and other civil society groups regarding their violated right of access to information.

The FOICA's statistics shows that after the Velvet Revolution since May 2018, 15% of information requests were delayed, violating the 5-day time frame set by the FOI law. On the other hand, compared to 2017, it should be noted that this figure has dropped to 15% from the previous 30%. The FOICA's daily observations confirm that late answers are not due to a tendency to hide information, but mainly due to the quality of administration and lack of internal coordination. The government-launched electronic tools, such as e-request.am, which significantly reduce the time and technical resource costs by increasing the efficiency of citizen-state communication, have had a major impact on the positive dynamics in terms of timing.

Content of answers - Full-time response rate is 63% for this year, clearly indicating positive dynamics compared to 34% in 2017. Although in the early stages of the post-revolutionary period the rate of incomplete responses increased, in 2019 this problem gradually decreased.

Mute Refusals and Unanswered Requests - There has been a significant improvement with regard to mute refusals. In 2017, the indicator was 11%, in 2019 - 3%.

Unjustified and justified refusals - The sharp decline in the volume of mute refusals is evident, but it has also increased the rate of unjustified refusals and incomplete answers. In some cases this indicates that while some officials previously avoided providing information and left information requests unanswered, at present the requests for sensitive information are rejected but not properly justified.

Proactive transparency - The FOICA observations show that proactive disclosure rules provided by the FOI law are not properly enforced by all public bodies, and the overall technical and content standards for posting information on official websites are not maintained.

In this context the availability of functional mechanisms for the protection of the journalists' right of access to information is of paramount importance. The judicial protection mechanism is indeed positive but it is not effective. Hearing of a case may take several years, as a result the received information will lose its significance and the adjudication will become merely a matter of principle.

Hence it is time to strengthen the norms defining liability for violating the right to information, as well as consider possibilities for establishing an extrajudicial body to protect the right of access to information.

I think the best model for Armenia is the establishment of a specialized oversight body for ATI. That body will have binding order-making powers. It is clear that such oversight body needs to be independent of public authorities (i.e. government bodies) it is overseeing.

### ***3. Data Protection vs. Media Freedom***

Another problem in the media sector relates to the personal data protection legislation which is often abused by public officials. There are situations where transparency benefits should prevail over the interest of protecting secrecy. This in particular is about cases where the respective information concerns public officials or high- rank civil servants or recipients of additional remuneration from state resources. It is very important that data protection legislation is not used as a shield hampering the disclosure of violations, abuses or frauds.

For instance recently the issue of publishing information regarding bonuses became subject for active public debate. Indeed this is personal information but the public does have the right to know on how efficiently the taxes they paid are being spent by the state and thus has the right to learn on who and how much was paid as a bonus from the state budget. I also think it is critical to define a special provision under DPL that the processing of personal data for journalistic purposes should be an exception from the law's strict regulations. Such provision existed in the DPL but it was secretly removed in 2016.

#### 4. Insult and Defamation

In the past year, specifically in the period of May 2018 to June 2019, 91 court applications have been filed against media on insult and/or defamation charges. One of the media outlets stands as a respondent to 5 or 6 cases involving insult and defamation. It appears that instead of carrying out their main mission, the media are compelled to fetch resources to be able to withstand these cases. This is a serious loss of time and financial resources for the media. Indeed, this did not happen without the involvement of political figures. For instance, Hayk Sargsyan, an MP, has filed 8 court cases against media on 1 October. Politicians should be more tolerant, this is the side effect of holding a public post. Anyone possessing administrative resources and being on public arena should be ready to also face the negative side. On a positive note, if several years ago such disputes were being solved at the street, through violent arguments and beating, now the complaining sides go to court without resorting to violent actions. But the problem is that the complaining sides consider the court to be the only remedy for restoring their violated right. Whereas remedies should be sought in the extrajudicial mechanisms.

5. *Protection of Journalistic Sources* is another challenge for the media now. Currently there are three criminal cases in the framework of which 3 media outlets have been involved and summoned for interrogation as witnesses. The law enforcement bodies demanded to release secret journalistic sources but they all refused to release information based on Article 5 of Armenia's Media Law. It is a very bad practice that journalists are involved in a criminal case as witnesses only because they publish something of interest for the law enforcement bodies. The editors complain that this kind of precedents create self-censorship in the newsrooms. Even in the cases when they possess very important pieces of information of high public interest, they may avoid publishing it, fearing that they will be involved in a new criminal case. There is also a criminal case filed against ©Zhoghovurd® newspaper for publishing sensitive information about 1March case (the text of evidence provided by the second President of Armenia Serzh Sargsyan in 2008). The Special Investigation Service first sent a warning to the media re non-permissibility of publishing pre-investigation secret and then filed a criminal case against newspaper on 16.03.2019 following a repeated publication. Special Investigation Service already finished investigation

of the case and will soon direct it to the court, as I was informed by its spokesperson.

6. Let me conclude by a positive note regarding Media Freedom Foundation, a new ambitious initiative of the Armenian Government and media CSOs. This initiative aims at establishing a new organization to finance independent media in Armenia. The Board of the Foundation will include media organizations, independent experts and Parliament Members, and will be funded from the state budget, but the government will not be on the Board. The main mission is to foster free media and independent journalists. Many of the current media are partisan and politically aligned or are funded by the opposition and oligarchs. The major resource for this new initiative is the government for now, but there are also interested donors. We think that this initiative once it is fulfilled may become a very positive good practice that others may follow.