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TECHNICAL PAPER:

Armenia's Media Sector Needs Assessment Report - 2022
*Overview of the National Legislative Framework Covering Media Freedom,
Freedom of Expression, Public Service Media and its compliance with Council of
Europe standards*

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List of Abbreviations

AMD	Armenian Dram (national currency)
CPFE	Committee for the Protection of Freedom of Expression
CRRC	Caucasus Research Resource Centre
CSO	Civil Society Organisation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUR	Euro
FOI	Freedom of Information
FOICA	Freedom of Information Centre of Armenia
ICANN	Internet Corporation for Assigned Names and Numbers
INDIREG	Indicators for independence and efficient functioning of audiovisual media services regulatory bodies
IRI	International Republican Institute
ITU-UNESCO	International Telecommunication Union of the United Nations Educational, Scientific and Cultural Organisation
NA	National Assembly of the Republic of Armenia
NSS	National Security Service
MIC	Media Initiatives Centre Armenia
MIL	Media and Information Literacy
NGO	Non-governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PSBS	Public Service Broadcasting System
PSM	Public Service Media
RA	Republic of Armenia
RFI	Radio France International
SLAPP	Strategic Lawsuits against Public Participation
UN	United Nations
USD	United States Dollar
USSR	Union of Socialist Soviet Republics

Executive Summary

This report, commissioned by the Council of Europe's Information Society Department, Division for Co-operation on Freedom of Expression, presents an update of the 2019 "Armenian Media Sector Needs Assessment – Overview of the National Legislative Framework Covering Media Freedom; Freedom of Expression; and Public Service Media and its Compliance with Council of Europe standards" (hereinafter: 2019 Assessment Report).

The 2022 Update Report provides an overview of the legal and institutional framework as well as institutional and resource capacities in the media sector in Armenia, specifically with regards to its compliance with international standards, and in particular those set by the Council of Europe and the case law of the European Court of Human Rights and takes stock of changes and developments since 2019. Specific attention is given to issues related to media governance; public service media; transparency of media ownership; self-regulation; quality of journalism; and combating hate speech and dis-/misinformation. Gender aspects have been incorporated across all vectors of inquiry.

The report was prepared using a human rights-based approach, and which involved 22 duty-bearers and rights-holders, using semi-structured discussion formats which followed thorough desk analysis of relevant documentation that reflected a wide variety of perspectives and sources. The stakeholder discussions focused on a) capturing developments in the sector since 2019; and on b) identifying technical assistance needs that could be met through a potential cooperation project under the upcoming Council of Europe Action Plan for Armenia (2023-2026), and for which this report would serve as the basis and baseline value holder.

Findings

Since joining the Council of Europe in 2001, there have been systemic and recurring challenges to media freedom in Armenia. The 2018 'Velvet Revolution' ushered in a period of reforms which brought Armenia closer to Council of Europe freedom of expression standards. Particularly independent online media outlets have demonstrated their ability to serve the democratic functions of the media.

The Council of Europe's Parliamentary Assembly (PACE), in its latest, 2022, report, assessed that the diversity of the media landscape had generally flourished since 2018, but noted that the Armenian media scene remained highly polarised.¹ Positive changes, since 2018, are also reflected in improved international rankings by organisations such as Reporters without Borders, and Freedom House. These reports, too, acknowledge the diversity –although not full independence – of the media, as well as the relatively free operation of online independent and investigative media. At the same time, concerns relate to continued legal actions and violence against journalists; political influence and business controls in the print and

¹ PACE Report 2022. 'The functioning of democratic institutions in Armenia': Report by the Council of Europe's Parliamentary Assembly; Doc. 15432, 10 January 2022; available at: <https://pace.coe.int/en/files/29803>.

audiovisual media; and the polarisation of the media caused by the editorial representation of their owners' interests.

Media consumption patterns have significantly changed since the 2019 Assessment Report. The sources of information used by Armenian audiences on a daily basis, including for news, are now overwhelmingly internet-based and social media platforms (with Facebook and YouTube the two main platforms, followed by Instagram). Television, and in particular national television, is the second leading source of information, although its consumption has steadily declined since 2015. Local television and Russian television channels are being consumed by a considerable number of Armenians and stakeholders suggested that in particular international news is provided through Russian TV channels.

Echoing global trends, the influence of print media in Armenia has dramatically decreased. Most media outlets are affiliated with and directly controlled by larger political or business interests, creating systemic and persistent limits to press freedom and thus, democratic media performance. The advertising market is underdeveloped, which leads to the media getting sponsorship and support from politicians and other influential public figures. The same applies to public media, which, in many cases, refrains from government criticism. Media paid subscription is not developed either. These factors limit the financial independence of the media. Revealing the true owners of media outlets in Armenia is one of the main challenges in the sector. Although the legislative framework for ensuring transparency of media ownership was developed in 2021, effective implementation is so far lagging behind.

Since the 2019 Assessment Report, Armenia has faced two serious crises—the Covid-19 pandemic, and the 2020 Nagorno-Karabakh war. During these crises, Armenian society was confronted with an unprecedented level of disinformation and hate speech. This led the authorities to severely restrict the independence of journalists and freedom of expression, albeit temporarily, and has prompted legislative changes that were rushed in and lacked necessary consensus to ensure their quality and ownership. Specifically, the 2020 and 2021 amendments to the **Law on Mass Media** (the main act regulating the media field) introduced new layers of restrictions to the right to freedom of expression: the newly added definition of “unidentified sources of information” generated an important degree of legal uncertainty and created risks of unnecessary restriction of journalists' right to protection of news sources. Furthermore, the additional legal entitlements for the denial of accreditation of journalists by the public authorities created new legal challenges. Overall, the current legal framework regulating the media sector is outdated and not appropriate to enhance freedom of expression and the media. Rather than going through further amendments, there is a need for an urgent and comprehensive legal reform.

With regard to the **Public Service Media** (PSM), the 2022 Update Report finds that while some changes had been made since 2019 (for example on independent financing), many issues remained to be addressed, including: (1) the need for providing new legal guarantees on the financial sources for further development and investments by the PSM - especially in terms of digitisation - in a dedicated manner. Moreover, the allocation of advertising funds would need stable and accurate audience ratings, audited according to international good practices. Currently, there are neither legal, nor industrial (self-regulatory) schemes in place to

guarantee the alignment with the necessary standards. The integration of the PSM is still lagging behind both in operational (2) and in digital output (3).

The **Law on Audiovisual Media**, which replaced the outdated Law on Radio and Television, was adopted in 2020 and aimed at reflecting the significant changes in the nature of content production and dissemination in the digitally transformed media environment. It covers the activities of traditional broadcasters (radio and television); of non-linear audiovisual services' providers; and, to some extent, of (telecommunication) network operators. While the new law was necessary and urgent, its provisions have raised concerns, including by the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe's PACE. Concerns also relate to the implementation of the law, suggesting that it had not achieved on the government's promise to reform the television market: *inter alia*, stakeholders concluded that the new law preserves the outdated licensing procedure and maintained non-transparent and non-comprehensive awarding of licences. A revision of the law to ensure alignment with Council of Europe standards is therefore necessary.

In 2010, Armenia became one of the first post-Soviet countries to decriminalise **defamation** (insult and slander); criminal liability was replaced with a provision, in the Civil Code, allowing for compensation for damaging someone's reputation or hurting their dignity. The decriminalisation of defamation significantly improved the protection of journalists and editorial staff from criminal prosecution on political grounds. At the same time, the introduction of civil liability for libel and insult, and the introduction of relevant compensation for moral damage resulted in an increase in the number of court cases against media and journalists. In **July 2021, "grave insult" was criminalised**, and a new article 137.1 was added to the Criminal Code, which provided the definition and the criminal liability for it. This new provision has received widespread criticism from international and domestic observers, including the Human Rights Defender of Armenia. The criminalisation of speech aimed at countering (foreign) political tensions in the context of the war and its aftermath, as well as the societal challenges fighting the pandemic is legally disproportionate and inadequate in terms of the policy.

Several limitations affect the **rights of journalists** in Armenia. The state of emergency declared in Armenia in March 2020 as a result of the Covid-19 pandemic, and the war in Nagorno-Karabakh in autumn 2020 which resulted in the introduction of martial law, have significantly transformed the media sector and the framework of journalists' rights: a governmental decree banned the publication of any but official information in media outlets and on social media. Moreover, the fact that the implementation of these decrees was controlled by law enforcement agencies, interference in the activities of the media, often with subjective and arbitrary approaches, caused considerable concern.

Journalists' access to information is regulated under the 2003 Law on **Freedom of Information**, which defines general rules for requesting public information by all categories of professionals (journalists, attorneys, civil society activists), as well as by the general public. However, despite the precisely defined procedures and rules for filing and processing of information, effective enforcement mechanisms are lacking, which hinders the meaningful enjoyment of the rights to freedom of information. In June 2020, the Armenia signed the Council of Europe Convention on Access to Official Documents (also known as the **Tromsø**

Convention) expected to be ratified by mid-2022. The Convention aims at fully guaranteeing freedom of information, and domestic legislation and practice will need to be brought into line with its provisions. However, there is a knowledge and implementation gap among various stakeholders, including journalists and the judiciary, about the Convention. Overall, the area of freedom of information needs further development in Armenia. The Government would benefit from support to monitoring and promoting the implementation of the law, and the establishment of an independent review mechanisms; establishing the office of an access to information commissioner should also be considered to ensure systematic and independent review, monitoring and the promotion of a unified implementation practice.

Safety of journalists remains a concern in Armenia, although the professional rights of journalists are protected under Article 164 of the Criminal Code. Overall, physical violence and attacks against journalists have decreased in recent years, however in 2021, several cases of physical threats and violence against journalists were registered, and Armenian stakeholders emphasised that online harassment against female journalists was an emerging threat undermining the safety of women in the media. In many cases, threats of violence and attacks against journalists are not properly investigated. Attacks of previous years have not been followed up, nor revealed by the law enforcement bodies, and no person was convicted to be criminally liable for attacking journalists in 2020 or 2021. This impunity emboldens the perpetrators of the crimes and at the same time, has a chilling effect on society, including journalists. Another important aspect related to the safety of journalists was the media work during the 2020 Nagorno-Karabakh war. The majority of journalists covering the hostilities did not have the capacity, knowledge or experience in war reporting.

Digital security is another area of concern. Hacking of websites and of official Facebook pages of media outlets is pervasive, and are accompanied by online harassment against journalists, including phishing incidents. Experts reported attempts, by hackers, to obtain information or data such as usernames; passwords or other sensitive details, by impersonating as a trustworthy entity in email spoofing; and instant messaging. Surveillance of media representatives was a growing and a new threat, endangering privacy and personal security of journalists.

Armenian public authorities and stakeholders reported intensified waves of **hate speech** and aggressive discussions, especially on social networks. The Criminal Code legislates against hate speech under Article 226, and in April 2020, the existing offence was supplemented by the new and more complex Article 226.2 which prohibits the public call for violence against a person or group of persons based on sex, race, colour, ethnic or social origin; genetic characteristics; language, religion, ideology, political or other views; affiliation to national minority, property status, origin, disability, age or other personal or social ground, including such acts as publicly justifying or advocating such violence. In practice, Article 226 has rarely been used. As of March 2022, the new draft Criminal Code, a new hate speech article is foreseen to criminalise any action aimed at 'the incitement of national, ethnic, racial, political, ideological or religious hostility, hatred or intolerance, as well as the incitement of hatred, intolerance or hostility against another social group'. Meanwhile, there are no rules applicable to hate speech neither in Armenian civil, nor in administrative law. Owing to this, a number of professional unions have attempted to self-regulate in order to prohibit hate speech in their particular sphere of activity.

The **status and independence of the National Commission of TV and Radio of Armenia** (NRA) is specifically addressed under the Armenian Constitution, which defines the scope of its authority, as well as its composition and members' appointment rules. Furthermore, the Law on Audiovisual Media stipulates the specific rules on the status and the powers of the NRA, including the procedure for the nomination and election of the members of the Commission. While the NRA was provided with *de iure* independence by the new Law on Audiovisual Media, provisions about meaningful stakeholder participation from a wide spectrum of society during the nomination and/or appointment process was missing.

The establishment of an **independent public service broadcasting system** (PSBS) is guaranteed under Article 42 of the Constitution. Also, the Law on Audiovisual Media stipulates the main provisions of the PSBS, which are foreseen to guarantee "the principles of objectivity, democracy, impartiality, diversity, pluralism, as well as shall ensure freedom of expression, conscience, thought, belief and creation." The law also provides for the governance by the Council of the PSBS which is to ensure the regulation of and exercising control over the PSBS.

The **governance of the PSM** system still lacks a critical set of guarantees for independent functioning and the meaningful realisation of its capacities. There is a growing level of loss in trust in the State and the public value information communicated by the public authorities, which has served for a fertile ground for dis- and misinformation to flourish. Thus, it is pivotal for the PSM to take full advantage of its unique and specific role in building a social cohesion in Armenia on democratic terms.

Issues to be addressed as of March 2022:

General:

- the rebuilding of a cooperative and inclusive framework and consultative process between the state, civil society and the media sector;
- the development of a comprehensive media reform strategy and a detailed media policy outline based on scenario analyses;
- the urgent decriminalisation of speech acts relevant to media reporting and the withdrawal of criminal liability for grave insults;
- the further promotion of self-regulation and the implementation of co-regulatory mechanisms;
- the advancement of media ownership transparency and the consequent enforcement thereof;
- the establishment of an extrajudicial review mechanism for access to information violations;
- systemic and strategic responses in countering newly emerging digital security risks, including those threatening the safety of journalists in digital environment; and
- safeguarding journalistic work in the media and ending impunity to those committing crimes against journalists.

Legal:

Based on the needs assessment and analysis of the existing legislative framework carried out by the authors of this Report, it is recommended that national authorities carry out a major legal reform process with setting up a dedicated Working Group (WG) including representatives of all stakeholders.

The complex legal reform should enable a level playing field for all media service providers, a fair balance of rights and obligations of linear and of nonlinear providers and an overall democratic legislative context. The 2nd stage of the legal reform process should foresee the setting up a dedicated Working Group (WG) including representatives of all stakeholders – the Prime Minister’s Office, the Ministry of Justice, other ministries and agencies with a relevant corresponding portfolio, the National Commission on Television and Radio, the Council of the Public Television and Radio Company of Armenia, the Public Television and the Public Radio Companies of Armenia, private broadcasters’ associations, civil society organisations and supported by the Council of Europe international experts as well as by local legal experts.

The agenda of the Legal Reform Process would need to address particularly:

- a. Ensuring the legislative requirements to the functioning of a free, independent and sustainable media sector in Armenia;
- b. Creating an enabling and future-proof legal framework;
- c. Revisiting criminalisation of speech acts, such as insult in light of international Freedom of Expression standards;
- d. Levelling the playing field in the media sector;
- e. Supporting high-quality journalism and guaranteeing the safety of journalists;
- f. Enhancing media literacy;
- g. Tackling urgent needs on the fight against hate speech and countering dis-/misinformation;
- h. Safeguarding good media governance with particular attention to strengthening the regulatory capacities of the National Commission on Television and Radio in terms of Status and Powers, the Financial autonomy and the Transparency and Accountability of the Commission;
- i. Warranting media ownership transparency and efficient enforcement with special regards to Council of Europe instruments;
- j. Ensuring independence of the public service broadcaster and supporting its efforts to ensure trustful and meaningful public service media output, and enabling the full enjoyment of digitalisation;
- k. Promoting self- and co-regulation in the media sector by statutory support and by enabling access to sustainable financial schemes and the strengthening of the capacity of already established self-regulatory schemes in place in Armenia.

Public Service Broadcasting:

- In order to secure long-term financial stability and full editorial independence of public service broadcaster it is important to have a system of a long-term, four- or five-year budget, with an indexation for inflation;

- The Council, the TV and the Radio management should explore a further in-depth cooperation and merger possibilities, make a thorough analysis of the advantages and disadvantages concerning the broadcast output, the management and the running costs, in order to benefit from digitalization;
- The precise needs for staff trainings should be analysed and described in a specific training needs assessment and various international donor organisations must be approached to seek assistance;
- The Council of Public TV and Radio Company should carry out regular studies focusing on the trustworthiness of the News gathering by Public TV and Radio to ensure that Public Service Broadcasting is ranking as number one in public opinion surveys on trustworthiness of their news;
- The Public TV and Radio Company should have an internal Code of Ethics and an Ombudsman or an editorial board to self-regulate its output.

1. Introduction

1.1 Background

Since joining the Council of Europe in 2001, the Armenian media sector has faced **systemic and recurring challenges to media freedom**. The 2018 ‘Velvet Revolution’ brought about a series of measures resulting in greater alignment with the Council of Europe freedom of expression standards, and certain segments of the media—especially independent online media—have demonstrated their ability to fulfil its democratic functions. The Council of Europe’s Parliamentary Assembly (PACE) assessed, in its 2022 report, that Armenia’s diverse media landscape has flourished since 2018. The report, however, also noted that the Armenian media scene remained highly polarised.²

The positive changes have been reflected in the improvement of the position of the Armenian media, since 2018, in international rankings. For example, the World Press Freedom Index 2021 of Reporters Without Borders ranked Armenia 63rd out of 180 countries—an improvement, since 2018, by 17 positions; the report acknowledged the diversity of the media, while also finding that it was not, yet, independent.³ And Freedom House, despite ranking it as only “partly free” in its Freedom in the World 2021 report,⁴ assessed that online independent and investigative media operate relatively freely in Armenia. However, the same report noted continued legal actions and violence against journalists and identified political and business control in the print and audiovisual media as factors hindering democratic performance. These international assessments, too, highlighted the polarisation—caused by the editorial representation of their owners’ interests—of the Armenian media in general, and the print media in particular.

In 2019, the Council of Europe commissioned an “Armenian Media Sector Needs Assessment Report – Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards” (hereinafter: 2019 Assessment Report). The present report, which is part of an upcoming Council of Europe project development exercise in Armenia, is an update of the 2019 Assessment Report. The 2022 Update Report will serve as the basis and baseline value holder for preparing a coherent project proposal aimed at supporting a professional, ethically responsible, and diverse media landscape in Armenia, in line with Council of Europe and other international standards.

The 2022 Update Report provides an overview of the current needs in the media sector and technical assistance offered by international stakeholders. The report provides a general analysis of the current legal and institutional framework in place in Armenia, and its compliance with Council of Europe and other international standards. It also identifies

2 PACE Report 2022. ‘The functioning of democratic institutions in Armenia’: Report by the Council of Europe’s Parliamentary Assembly; Doc. 15432, 10 January 2022; available at: <https://pace.coe.int/en/files/29803>.

3 See the ‘World Press Freedom Index 2021 - Armenia’ by the Reporters Without Borders; available at: <https://rsf.org/en/armenia>.

4 See the ‘Armenia: Freedom in the World 2021 Country Report’ by the Freedom House; available at: <https://freedomhouse.org/country/armenia/freedom-world/2021>.

possible areas of assistance to be provided through a Council of Europe-implemented project, and which would build on the Council's role as the guardian of the European Convention on Human Rights (ECHR) and relevant standards in the area of freedom of expression and the media, as well as an appraisal of the institutional and resource capacities to implement it. The report considers gender across all areas of analysis. It also references case law of the European Court for Human Rights (ECHR).

Freedom of expression and information is essential for the functioning of a democratic society. This freedom is guaranteed by Article 10 of the ECHR. The application of the ECHR itself is overseen by the European Court of Human Rights (ECtHR), which has developed a substantial case law in the process of the Convention interpretation. Article 10, the relevant case law of the ECtHR, and other Council of Europe standards in the field of freedom of expression and information are the basis for member States' national legal and institutional frameworks to guarantee this freedom. Council of Europe standards include, among other, recommendations and declarations by the Committee of Ministers: on protection of journalists and their sources of information; on media pluralism and diversity; on media in times of crises; on public service media; on the independence of broadcasting regulators; on professional and responsible journalism; on safety of journalists; on freedom of expression and the respect of privacy and human dignity; on access to public information; and on media coverage of elections; and others.

1.2 Scope

The 2022 Update Report assesses the legal and institutional framework on freedom of media and information in Armenia. Specific attention is paid to issues related to media governance; the public service media; the transparency of media ownership; self-regulation; the quality of journalism; and to combating hate speech and dis-/misinformation. Gender aspects have been considered in all assessed areas. The roles of institutional, industry, and other important stakeholders were assessed in conjunction with existing legal solutions and regulatory practices.

1.3 Methodology

The 2022 Update Report used the 2019 Assessment Report as a baseline. It included a desk-based examination of laws, regulations, policies and implementation experiences, as well as organisational and professional practices affecting the media field in Armenia. Documentation considered official/governmental sources, as well as reports by civil society organisations.

The assessment adopted a human rights-based approach, which meant the consultation of duty-bearers (stakeholders from parliament; governmental and regulatory institutions; as well as representatives of the international community) and rights-holders (industry stakeholders and representatives of non-governmental organisations) in a participatory and transparent way. A full list of stakeholders consulted for this assessment can be found in Annex III to this report.

Due to the ongoing Covid-19 pandemic, the needs assessment had to be carried out entirely remotely via online meeting formats. These formats included thematically tailored, semi-structured individual and group interviews and discussions. The complete list of questions is provided in Annex IV of this report.

Logistic, administrative and communication support was provided by the Council of Europe Secretariat in Strasbourg and the Council of Europe Office in Armenia.

2. Overview of the media landscape

2.1 Media consumption patterns in Armenia

Armenia's diverse media landscape has generally flourished since the 2018 'Velvet Revolution'. In particular independent online media has demonstrated its ability to serve the democratic functions of the media.

Media consumption patterns have significantly changed since the publication of the 2019 Assessment Report. The sources of information used by Armenian audiences on a daily basis are overwhelmingly internet-based and social media platforms. In a 2021 survey by the Media Initiatives Centre (MIC) and the Caucasus Research Resource Centre (CRRRC), 67% of respondents reported that they are using internet and social media platforms every day. However, only "14% of those who use internet resources and social media daily reported that they are accessing online news websites directly (not via social media platforms)".⁵ The survey found that 90% of respondents used Facebook (an increase, since 2017, from 69%) and YouTube, making these the two most popular networks in Armenia, followed by Instagram (which 45% of respondents reported using). 89% of those reporting the use of Facebook said they did so to access news.⁶

According to the same research, television is the second leading source of information. Its consumption has dropped from 82% in 2015 to 72% in 2019 and 59% in 2021, while the daily use of social networks and online media increased from 32% to 57% and 67%, respectively. The second more frequently consumed source of information after social media and online media was national television, with 59% of respondents stating that they watch "national television" every day. Local television and Russian television channels were watched daily by 40% and 30% of respondents, respectively, followed by cable, satellite, or paid TV channels and Russian internet resources, which were consumed by 26% and 12% each day, respectively.⁷

5 See the 'MEDIA CONSUMPTION IN ARMENIA December, 2021' Survey findings by the Media Initiatives Center and the Caucasus Research Resource Center-Armenia, available at: <https://mediainitiatives.am/wp-content/uploads/2022/01/Media-Consumption-in-Armenia-Report.pdf>.

6 Ibid.

7 Ibid, page 12.

An earlier, 2019 survey, by the Center for Insights in Survey Research of the International Republican Institute (IRI),⁸ finds that television as a news source dominates (81% of respondents in 2019 compared with 79% of respondents in 2018) and confirms the increased influence of social media (61% of respondents in 2019 compared with 54% of respondents in 2018). While the results of those two surveys vary slightly (most likely due to the difference in methodology and sampling), the general trends clearly confirm the continued importance of television, and the increased consumption of online media with a strong domination of social media.

The usage rate of radio and print media is, with 8% and 3%, respectively, of respondents of the CRRC/MIC 2021 survey, very low.⁹ The survey finds that Azatutyun.am (the website of Radio Liberty); the general news outlet News.am; Lurer.com; and the TV news outlet Armnews.am are the most popular online news resources.¹⁰ The survey also finds that, presently, 4% of the respondents are subscribed to a paid online resource (such as TV channels or journals), which implies an increase compared to 2019, when this figure stood at only 1% of the respondents. It is noteworthy that overall, 13% of the respondents signalled their readiness to pay for online media resources to receive reliable information regularly. This result was an improvement compared to the 2019 data, where the figure stood at 6% of the respondents. The vast majority of these (80%) said that they would pay no more than AMD 4000 AMD (USD 8.41) monthly.¹¹

The digital turn had profound consequences for the traditionally most influential media sources, such as television and the radio, in terms of their capacity to reach the Armenian audiences. The leading position of the National Television has significantly decreased over time; however, it is still the most trustworthy source for information in political matters such as foreign policy.¹² Also, the National Radio and other local and international channels (for example, Voice of America or RFI) are still well trusted information sources for Armenian audiences.¹³

2.2 The media market in Armenia

The media market is mostly dominated by broadcasting and social media, while print media is dramatically decreasing, and its influence is very low. Digital terrestrial broadcasting and the allotment of the channels on the public distribution platform (multiplex) is defined under the 2020 Law on Audiovisual Media. The country-wide eight multiplex channels include two

8 Center for Insights in Survey Research of the International Republican Institute https://www.iri.org/sites/default/files/armenia_poll_may_2019_final.pdf.

9 CRRC Media Consumption Research, available at: <https://mediainitiatives.am/wp-content/uploads/2022/01/Media-Consumption-in-Armenia-Report.pdf>, page 13.

10 Ibid, page 16.

11 Ibid., page 16.

12 IRI, Public opinion survey, January 2022, available at: <https://www.iri.org/resources/public-opinion-surveyresidents-of-armenia/>, page 51.

13 Ibid.

public television channels (one of general scope and one with spiritual-cultural content); five private channels of general scope; and one re-broadcasting television company, which is currently the Russian RTR Planet channel and which broadcasts by an inter-governmental agreement between Armenia and the Russian Federation. In addition to these country-wide channels, there are ten public multiplex channels in Yerevan, including six private channels, covering entertainment, youth, musical, youth/educational/informative, international and local news programming; two of these channels operate under the intergovernmental agreement (ORT and Russia Kultura), one channel is the intergovernmental MIR TV company, and there is one licensed public TV channel. Each of the ten region has its own TV channel. Thus, in multiplex, at total of 28 TV channels are broadcasting. There are also four re-broadcasted television channels in the capital, all of them are in Russian.

There are four country-wide radio channels, three of which are private, and one is public. In addition to the country-wide channels, there are 21 channels in Yerevan, including three public channels; RFI (a French channel); the MIR channel under the inter-governmental agreement, and 16 private channels. In the regions, there are only four radio channels, based in Ararat, Gegharqunik, Shirak and Lori regions.

The total number of licensed TV and radio channels is 57, out of which 45 are licensed TV and radio channels; six are public channels without licences; and six channels under inter-governmental agreements. There are also 65 web operators. Since the expiry of their licence, no analogue channels exist.

The number of public and private radio broadcasters in rural areas is significantly lower compared to the capital Yerevan. There are only three country-wide radio stations, including the public radio and three private channels available to citizens living outside of the capital, while radio listeners of the capital city enjoy 21 radio stations, including three public radio channels.

The print media sector is in a dire financial and economic state. The global trends in print media decline are echoed in Armenia, where no investments have been made in the recent past; nor are there any commercial advertising resources available for newspapers. Thus, the print media sector has been almost completely digitised and is disseminated via the internet and on social networks.¹⁴

Most print and audio-visual media are affiliated with and directly controlled by larger political or business interests, creating systemic and persistent limits to press freedom and thus, democratic media performance. The advertisement market is underdeveloped, which leads to the media getting sponsorship and support from politicians and other influential public figures. The same applies to public media, which, in many cases, refrains from government criticism. Media paid subscription is not developed either. All these factors limit the financial independence of the media. Revealing the true owners of media outlets in Armenia is one of the main challenges in the sector. Although the legislative framework for

¹⁴ Media Landscape, European Journalism Center, available at: <https://medialandscapes.org/country/armenia>.

ensuring transparency of media ownership was developed in 2021, effective implementation is, as yet, lagging behind.

3. Overview of the current legislative framework

3.1 General

Since the 2019 Assessment Report, Armenia has faced two serious crises—the Covid-19 pandemic, and the 2020 Nagorno-Karabakh war. During these crises, Armenian society was confronted with an unprecedented level of disinformation and hate speech. This led the authorities to severely restrict the independence of journalists and freedom of expression, albeit temporarily,¹⁵ and has prompted legislative responses that were rushed in and lacked necessary consensus-building to ensure the quality and ownership of these responses. As a result, the new legislation has received legitimate internal and external criticism. For example, in March 2020, the authorities adopted a decree to prevent the dissemination of false information and publications likely to cause panic in the context of the coronavirus pandemic. The decree drew strong criticism from media representatives and was, as a result, withdrawn.¹⁶ Instead, a package of amendments to the Criminal Code and the Administrative Code was discussed by the National Assembly (NA). These draft amendments proposed that any organisation engaged in journalism would only be able to publish information on coronavirus once this information had been published by official sources, namely by the authorities. Failure to comply with this requirement was considered an infringement of the state of emergency declared at the beginning of the pandemic, with offenders facing fines. Press representatives and the OSCE Representative on Freedom of the Media criticised the disproportionate nature of this restriction on freedom of expression and pointed to the role of media outlets in combating the dissemination of false information. In April 2020, the contested provisions were withdrawn, and no media outlets were fined.

During the 2020 Nagorno-Karabakh war, the authorities applied another restriction on media content. On 27 September 2020, the government issued a decree declaring martial law on the territory of the Republic of Armenia, supplemented by legislative amendments requiring journalists to disseminate only official information on military operations. The Criminal Code and the Administrative Code were also amended to provide for penalties for infringements of the restrictions imposed by martial law. In particular, a fine of 2 000 to 3 000 times the nominal wage, and a two-to-three-year prison sentence was imposed for any action infringing the rules on publication or dissemination of information during the period of martial law, defined as “causing harm to the legitimate rights.”

The particularly sensitive political situation caused by the pandemic and the immediate aftermath of the war intensified social and political tensions in the society and were reflected in the rise of hate speech and other illegal content on social platforms and in traditional media.

15 “The Functioning of Democratic Institutions in Armenia”, PACE Report, 2021, available at: <https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisaires/2021/20211217-ArmeniaInstitutions-EN.pdf>, paragraph 119.

16 Ibid.

Disinformation¹⁷ became widespread, spreading further and faster online than before. Distrust in policymakers and politicians was high, and the government was forced to devote its energy to responding to falsehoods instead of communicating information of public interest. Indeed, disinformation, both in the traditional media, and especially on the internet became a major concern in Armenia as reported by civil society organisations (CSOs) and other media watchdogs.¹⁸

During this period, the authorities were particularly active in developing numerous draft laws in the media sphere, some of which were adopted by the National Assembly (NA) and formed an integral part of the media legal framework. These legislative initiatives mostly had the aim to combat widespread disinformation and hate speech. Some of these laws, according to CSOs assessments, were overly restrictive and did not meet freedom of expression standards (see details in section 3.2.2).

Meanwhile, the 2003 Law on Mass Media became seriously outdated and difficult to apply in a consistent and proportionate manner in the current Armenian legal landscape. In 2021, this law was amended twice (these were the first amendments since its adoption), but the new rules created rather new legal challenges and did not address previous critical reviews and recommendations on the necessary update of the law.¹⁹ Amendments to the Criminal Code adopted in 2021 criminalised “grave insult” and raised considerable concerns and criticism among media experts and civil society (see details in section 4).

Meanwhile, substantial and systemic reforms in the media legislation field, strengthening proactive transparency tools and advancing access to diverse and reliable sources of information were mainly side-lined. Lacking comprehensive legal and policy reform in compliance with international standards, the legislative amendments were mainly episodic and fragmental, and there was no holistic approach to solve the current problems with regard to hate speech, disinformation, libel and defamation in a systematic way. On the contrary, some of the amendments were of a regressive character, and were directed to restrict freedom of expression, rather than regulate the field, and provoked a form of self-censorship by and became a real financial burden on the media. These legislative initiatives posed new risks to freedom of expression and missed the opportunity to address existing problems.

It can be concluded that the current Armenian legal framework regulating the media sector is outdated and not appropriate to enhance freedom of expression and of the media. Rather than going through further amendments, there is a need for an urgent and comprehensive legal reform.

17 The term ‘disinformation’ is used to „describe false or misleading content with potentially harmful consequences, irrespective of the underlying intentions or behaviours in producing and circulating such messages“. See the definition used by the Broadband Commission (ITU-UNESCO) Report ‘Balancing Act: Responding to Disinformation While Defending Freedom of Expression’ 2020

18 The Mapping of the Media in Armenia in the Context of the Fight Against Dis/Misinformation, Freedom of Information Center, December 2021, <http://www.foi.am/en/research/item/2184/>.

19 For the detailed assessment on the Law on Mass Media see the 2019 Assessment Report “Analysis of the Law of the Republic of Armenia on the Dissemination of Mass Information in light of the Council of Europe standards” pp. 31-34.

3.2 The Law on Mass Media

3.2.1 Overview

The 2003 Law on Mass Media – which defines general norms of media legislation and basic principles of media operation - is outdated and incompatible with international legal standards on freedom of expression. The 2019 Assessment Report already provided for a detailed analysis and put forward recommendations for necessary legislative steps;²⁰ these recommendations remain valid.

Namely, the 2019 Assessment Report advised to develop and adopt a comprehensive reform of the general mass media law regulating and guaranteeing the rights to freedom of expression and freedom of information; however, it appears that the two packages of amendments adopted to the existing law in 2020 and in 2021 were episodic and did not solve the previously highlighted problems, but in some aspects added new ones.

The first amendment²¹ was made in March 2020. This amendment covers Article 3, “Basic Definitions”. By this amendment, part 2 of Article 3, “Definition of Mass Medium” was supplemented with the following provision: “[t]on a website which has a domain and hosting and contains the data mentioned in the points 1 and 2 of the Article 11 of this law”. The purpose of this legislative amendment was to cover the online media within the scope of the law.

The second package of amendments²² was adopted in December 2021 and aimed to address fake news dissemination issues, and to tackle disinformation. These changes included a new definition, “unidentified source of information”, and added an additional ground for denying accreditation of journalists by the public authorities. It is to be noted, that the 2021 amendments contained necessary and important new provisions to ensure financial transparency of the media.

3.2.2 Detailed assessment of the Law on Mass Media

The main provisions of the 2003 Law on Mass Media refer to its scope; definitions; the accreditation of journalists; restrictions to freedom of expression; the right to protect anonymous sources; the right to reply and refute; and media liability. It also lays down certain measures (Article 11) on the transparency of media ownership. Publication of funding sources is required for all types of media under Article 12 and must be made public on the official web site of a given media outlet by 31 March of each subsequent year. In spite of the existing legal requirements concerning the reporting on media ownership and funding, Armenian media experts, parliamentarians and members of regulatory authorities believe that the media

20 For the detailed assessment on the Law on Mass Media see the 2019 Assessment Report “Analysis of the Law of the Republic of Armenia on the Dissemination of Mass Information in light of the Council of Europe standards” pp. 31-34.

21 See the text of the law in Armenian, <https://www.arlis.am/DocumentView.aspx?DocID=140640>.

22 See the text of the law in Armenian, <http://www.parliament.am/legislation.php?sel=show&ID=7863&lang=arm>.

transparency implementation practice restricts the public from making objective judgements about the influence of political and business groups on media.

Article 3 defines the different areas covered by the Law. In line with its title, this article refers, in paragraph 2, to the dissemination of information “through mass media”. According to the definition, mass media includes media products disseminated in the print media; through television and radio broadcasts; by public and joint telecommunication networks (network media product); and on a website “accessible to an undefined number of persons, as an information storage with permanent address, irrespective of the frequency of updates; the duration of information maintenance; or other criteria”.

It needs to be stressed that the idea of “mass media” or “mass information” as the main object of the 2003 Law is nowadays very imprecise, and definitely outdated. It is common to find these notions in post-Soviet countries, reflecting concepts commonly used in USSR media legislation. However, these notions neither fit into the current media panorama, nor are they in line with current applicable international and European standards. The 2019 Assessment Report therefore advised to focus the new law on the exercise of the rights to freedom of expression and freedom of information as fundamental human rights, laying down the foundations of the freedoms, the duties and the responsibilities in line with the international and European legal framework Armenia needs to adhere to, and with the constitutional provisions applicable. This new legal instrument would not contain a prescriptive list of different media types (print, broadcast, etc.) but rather, a general definition of media activities, embracing all present and future formats. Such a definition must focus on the essence of the activity: dissemination of information; ideas and opinions under editorial responsibility or control; on matters of public interest and to the general public (or a part of it) through any technical means of diffusion or distribution. In addition to this, the legal definition of journalist also included in Article 3 would need to be broadened to embrace reporting and similar public interest activities performed by actors other than professional journalists.

In December 2021, Article 3 on definitions was supplemented by a new definition of a “unidentified source of information.” More precisely, a new sub-clause was adopted in Article 3 (number 5), which defines the notion of “unidentified source” as “any website with a domain or hosting registered on the internet or any website or application account or any channel or page the identification data of the owner whereof are absent or apparently false or incomplete, if this disadvantage does not allow to identify the owner of the source.”

The stated aim of the new rules was concerned with mitigating the risks of the spread of information from unknown origin, thereby countering this form of dis(mis)information in the media. The proposers added arguments to the amendments, claiming its conformity with freedom of expression requirements, and asserting that “... journalists could, in fact, use information contained in sources of unknown origin to disseminate it on their behalf, but they will be responsible for the information they disseminate, ensuring that they have a professional duty before the public to verify the information”.

The 2003 Law on Mass Media also provides for legal protection mechanisms of journalistic sources. Article 5 defines that a journalist can be obliged to disclose the source of information only based on a court decision; in the course of a criminal proceeding with the aim of revealing

serious and very serious crimes; if societal interest in law enforcement outweighs the societal interest in protecting the sources of information and all other means to protect the public interest have been exhausted.

Article 6 of the Law contains a series of provisions vis-à-vis the accreditation of journalists, mandating the State authorities with the decisions. According to the international standards established by the UN Human Rights Committee General Comment no. 34, “(j)ournalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3.” Therefore, accreditation of journalists (directly or indirectly) by State authorities is incompatible with the said applicable international standards and was recommended to be eliminated from the Law. However, the most recent changes in 2021 did not address the problem of incompatibility with international standards; instead, they created additional restrictions to the right to freedom of expression. The new amendments introduced further legal grounds for the refusal or termination of the accreditation by the impediment of the accreditation of journalists in cases where information disclosure and transparency obligations (as enshrined in Articles 11 and 12) were not met but also for the enactment of further grounds for such refusals/non-granting. Thus, the new provisions further broadened the discretionary power of public authorities for restricting or terminating accreditation of journalists, without the clarity of the rules based on legality, necessity, and proportionality.

Article 7 contains another series of restrictions applicable to the exercise of the right to freedom of expression. These restrictions are based on the need to protect secrecy, privacy and private and family life, as well as to prevent the dissemination of unauthorised recordings, which could be legitimate reasons for such restrictions. However, they are expressed in very broad terms and lack legal clarity. In addition to this, international and regional standards, as well as, in particular, the case law of the European Court of Human Rights, have clearly established the preeminent character of the right to freedom of expression and the need to establish, by law, a public interest test, applicable to these cases. The current wording of the Law falls short of these criteria and requirements.

Article 8 regulates the rights to correction and reply. In order for these provisions to be in line with applicable international and regional standards, it is necessary that the right to refutation is limited to cases of dissemination of false or inaccurate information, when this causes a demonstrable danger to the reputation of the affected person. On the other hand, paragraph 5 also establishes that “(a)long with refutation, a person has the right to demand publishing of a response.” The possibility of publishing a response in addition to the right to refute inaccurate facts seems excessive and may give political figures a special power to force media outlets to literally publish or disseminate their own statements. These provisions would therefore impose a disproportionate burden on the right to freedom of expression and freedom of information of media actors and should be eliminated.

Article 9 establishes a series of general provisions regarding the liability of media actors for the publication or dissemination of content, whereby Paragraphs 1, 2, and 3 contain liability exemptions in a non-exhaustive but detailed manner. According to international standards, a

more general liability exemption would better meet the requirement on legitimacy and proportionality, also covering exemptions for third-party content, including that generated by social media users. Moreover, the provisions contained in paragraph 3 regarding the dissemination of secret information need also to be aligned with international standards, particularly regarding the protection of whistle-blowers and the dissemination of secret information of public interest, even if the obtention was not legal.

Article 11 refers to all the information media “products” need to contain, particularly regarding the identity of individuals holding any kind of editorial responsibility. This article should also be amended in order to introduce specific provisions regarding “(a)ny mass medium owning a domain or a hosting registered on the internet” when it comes precisely to obligations to provide information on the mentioned areas.

Article 12 contains the basic rules vis-à-vis transparency requirements for media outlets. It was recommended by the Council of Europe experts in 2019 that new requirements to guarantee full ownership transparency, as well as to avoid excessive concentration and anti-pluralistic behaviour in the media sector in general should be established.²³

The legislative amendments of 2021 aimed to address the urgent need for media transparency in Armenia, since there is no meaningful and objective information or data available on the media sector's financial viability. As the 2019 Assessment Report concluded: “(...) the media transparency measures are not sufficient and restrict the public from making objective judgements about the influence of political and business groups on media,”²⁴ thus the mass media market's economic conditions are not transparent nor assessable, which threatens media independence. “Media ownership is not transparent according to repeatedly announced concerns of major stakeholders. Ownership transparency rules and their enforcement are suffering from significant flaws; thus, media pluralism and independence of the media are not sufficiently safeguarded.”²⁵ The applicable Council of Europe standards²⁶ clearly require that member States should ensure that the public have access to specific

23 See the ‘Armenian Media Sector Needs Assessment Report - Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards’ Report by Dr Joan Barata, Bjorn Erichsen, Dr Krisztina Rozgonyi, and David Sandukhchyan (Jan 2020), p.33.

24 See the ‘Armenian Media Sector Needs Assessment Report - Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards’; Report by Dr Joan Barata, Bjorn Erichsen, Dr Krisztina Rozgonyi, and David Sandukhchyan; (Jan 2020), p. 36.

25 Ibid.

26 See the Declaration of the Committee of Ministers of the Council of Europe on the freedom of expression and information, adopted on 29 April 1982, as well as recommendations of the Committee of Ministers to member States No. R (81) 19 on the access to information held by public authorities, No. R (91) 10 on the communication to third parties of personal data held by public bodies, No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes, No. R (2000) 13 on a European policy on access to archives and Rec(2002)2 on access to official documents, as well as the Convention on access to official documents of 18 June 2009.

information about the ownership, management and editorial structures of media, as well as their financing, with effective regulatory reinforcement in place.²⁷

Indeed, the amendment of December 2021 to the 2003 Law on Mass Media introduced a rewording of Article 12 aimed at changing the current rules in two aspects, namely by laying down the possible and eligible sources of media funding (Paragraph 1); and by extending the rules on transparency on mass media revenues to online media outlets, also introducing more detailed financial reporting requirements to provide information on the financial sources of the media outlet (Paragraph 2). In addition to these amendments aimed at ensuring transparency of financial sources of the media, in June 2021, another legislative amendment was adopted to the Law “On state registration of legal entities and individual entrepreneurs” requiring from media companies to submit beneficial ownership declarations to the State Registry according to a set timetable. During the period from 1 September to 1 November 2021 all audio-visual media companies already submitted declarations regarding their beneficial owners, while other media were obliged to submit online declarations for the period from 1 January to 1 March 2022, along with all other commercial organisations (limited liability companies, joint stock companies, etc.), except for those limited liability companies the participants of which are only individuals. Journalistic organisations, along with other civil society structures, are also obliged to submit beneficial ownership declarations starting from 1 January 2023 (NGOs, foundations, parties, etc.). These organisations must submit a declaration by 1 March 2023. The data should be submitted through the bo.e-register.am webpage and be updated within 40 days after any change of a beneficial owner occurs. If no change occurs during the year, the organisations must confirm, through the electronic system, that the data of its beneficial owners is up to date, by 20 February each year. The threshold for revealing beneficial ownership is 20%. Violation of the legal rules related to the declaration of beneficial ownership disclosure carries criminal and administrative liability.

The beneficial ownership legal provisions were enacted to provide for sufficient transparency in the corporate sector, including the media. While these amendments could ensure the necessary legal framework for media transparency and accountability, it is still about the implementation and the enforcement of the new rules to bring along meaningful transparency in the media sector.

A comprehensive reform should ensure the functioning of a free, independent and sustainable media sector in Armenia; create an enabling and future-proof legal framework; support high-quality journalism; and guarantee the safety of journalists; warranting media ownership transparency and efficient enforcement with special regards to Council of Europe instruments; promoting self-regulation in the media sector by statutory support (acknowledging importance of self-regulation in regulatory or legislative acts), by enabling access to sustainable financial schemes and by strengthening the capacity of already established self-regulatory schemes.

²⁷ Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

Despite the recent amendments to the Law on Mass Media, the Law should be subject to full and urgent repeal within the framework of a holistic legal reform in the field of the media. The Ministry of Justice is about to launch a broad consultative process on reforming the Law on Mass Media, which should include a detailed market and a policy-scenario analysis, followed by legislative codification, with special attention to the introduction of an institutionalised self- and co-regulatory system in the media. The Ministry of Justice requested the support from the Council of Europe to the revision of the law specifically focusing on integrating the current system of media self-regulation into a co-regulatory scheme as part of the legislative reform, adjusted to Council of Europe standards and best practices.

3.3 The 2020 Law on Audiovisual Media

3.3.1 Overview

The Law of the Republic of Armenia “On Audiovisual Media” was adopted in 2020. The new law, which replaced the outdated Law on Radio and Television,²⁸ aimed at reflecting the significant changes in the nature of content production and dissemination in the digitally transformed media environment. Therefore, the law covers the activities of traditional broadcasters (radio and television); of non-linear audiovisual services’ providers; and, to some extent, of (telecommunication) network operators. Furthermore, the law stipulates the general requirements for audiovisual information of broadcasters (Chapter 2); the organisation of audiovisual programmes of broadcasters (Chapter 3); the governance of the public broadcasters (Chapter 5); the status and the powers of the State regulatory body (Chapter 6); the authorisation, licensing of usage of the public multiplex (Chapter 7); the conditions for organising the dissemination of audiovisual information (Chapter 8); and the liability for violating the requirements of the legislation on audiovisual media (Chapter 9).

3.3.2 The Law on Audiovisual Media (2020) in light of international standards

While the new law was necessary and urgent, its provisions have raised several concerns. The detailed analysis by the Representative on Freedom of the Media at the Organisation for Security and Co-operation in Europe (hereinafter: OSCE Expert Report)²⁹ highlighted several and serious concerns about the compatibility of the law with freedom of expression international standards. The main arguments included:

- the need to incorporate the jurisdiction criteria recommended by regional and comparative standards, focusing on the country of origin and main establishment of the audiovisual media service providers;
- the need to broaden up the notion of self-regulation to incorporate the difference between internal and external self-regulation;
- the need to repeal Article 7, which established that broadcasters shall ensure “the right of a person to respond to a speech directly addressed to him or her”;

²⁸ See the ‘Detailed Analysis of the Law of the Republic of Armenia on Television and Radio in light of the Council of Europe standards’ of the 2019 Assessment Report, pp. 23-30.

²⁹ See the “LEGAL ANALYSIS OF THE LAW OF THE REPUBLIC OF ARMENIA ‘ON AUDIOVISUAL MEDIA’” (ADOPTED ON 16 JULY 2020) Commissioned by the Office of the OSCE Representative on Freedom of the Media and prepared by Dr. Joan Barata Mir, an independent media freedom expert, February, available at: <https://www.osce.org/files/f/documents/0/a/493522.pdf>.

- the need to amend Article 8 in order to adopt a regulation on events of major importance in line with applicable European standards;
- the need to transform content restrictions on mourning or remembrance days into a mission for public service media to properly commemorate such type of occasions;
- the elimination of the prohibition included in Article 9, Paragraph 6 as it constitutes an unacceptable form of prior censorship;
- the need for clarification on which broadcasters are subjected to the restrictions introduced in Chapter 3;
- the elimination of the restrictions imposed by Article 10.7 to the content and time distribution of news programmes;
- the need to align the obligations of broadcasters in times of martial law or state of emergency (Article 17) with the principles of necessity and proportionality;
- the need to incorporate regulations on community media in order to facilitate the exercise of the right to freedom of expression by members of groups; communities or areas of a country; including foundations and associations, political organisations, religious groups, social and linguistic groups, universities, NGOs and many others;
- the need to amend the “anti-monopoly” provisions in order to introduce a legal regime based on the principles of consistency, rationality, necessity, and proportionality;
- the need to amend the procedure established in the law to nominate and appoint members of the Council of public service media bodies in order to guarantee the consideration and election of truly qualified candidates on the basis of an accountable, transparent and fair procedure;
- the need for public media funding to be amended in order to guarantee that the financial costs of providing the public service and the corresponding funding needs are sufficient;
- the need to amend the procedure for the nomination and election of the members of the Council of Radio and Television in order to properly guarantee accredited knowledge and top-level professional experience, or technical, journalistic or economic experience connected to media legal and ethical matters, as well as high ethical standards;
- the need to guarantee the financial stability of the regulator in order to perform activities in an efficient, proper and independent manner;
- the need to reform the legal regime regarding the licensing and authorisation of broadcasters and network operators and their replacement with a series of rules that guarantee a system based on the ideas of necessity and proportionality, thus avoiding excessive burdens and unnecessary interventions.³⁰

The OSCE Expert Report’s criticism was reiterated to a large extent by the Committee to Protect Freedom of Expression (CPFE), an Armenian NGO, putting forward further arguments on the inappropriateness of the new law addressing grave problems of the media market.³¹ Also, the recent PACE Report (2022) called on “the Armenian authorities to adopt a

³⁰ Ibid.

³¹ See the ‘Quarterly report of CPFE on Situation with Freedom of Expression and Violations of Rights of Journalists and Media in Armenia (January-March, 2021)’, available at: <https://khosq.am/en/reports/quarterly-report-of-cpfe-on-situation-with-freedom-of-expression-and-violations-of-rights-of-journalists-and-media-in-armenia-january-march-2021/>.

comprehensive approach to reform in the media sector,³² including the further alignment of the Law on Audiovisual Media with international standards on freedom of expressions and other Council of Europe instruments.

At the time of finalisation and update of this assessment report, within the Ministry of High-Tech Industry, a working group was set up by governmental decree to develop a package of amendments to the Law on Audiovisual Media, expected May 2022. The National Commission of TV and Radio is actively involved in the process and has prepared around 70 recommendations and suggestions to be considered.

3.3.3 The implementation of the 2020 Law on Audiovisual Media in light of stakeholders' assessments

Armenian media stakeholders reiterated several critical issues in light of the recent implementation and enforcement of the 2020 Law on Audiovisual Media. The law was first applied to the digital multiplex (MUX) and broadcasting licensing tenders in 2021 for six national, nine capital and eight regional broadcasters on the public MUX. The tendering process was highly disputed and legally challenged in court by some applicants, who filed a lawsuit against the decision of the National Commission on TV and Radio.³³

Moreover, criticism was put forward by international observers claiming that “neither the new law nor these competitions fulfilled the government's promise to clean up the Armenian television market. Hate speech and manipulations, insults and defamation, extreme manifestations of bias continue to be widespread on the air”.³⁴ They concluded that the new law, in fact, has preserved the outdated licensing procedure and maintained non-transparent and non-comprehensive awarding of the licences.

The experts' assessment reiterates such criticism. Therefore, it is highly recommended to urgently review the Law on Audiovisual Media and make the necessary changes and amendments to the law in order to ensure alignment with Council of Europe standards on freedom of expression.

3.4 Defamation in the mass media

In 2010, Armenia became one of the first post-Soviet countries to decriminalise defamation (insult and slander); criminal liability was replaced with a provision, in the Civil Code, allowing for compensation for damaging someone's reputation or hurting their dignity.³⁵ The

32 PACE Report 2022. 'The functioning of democratic institutions in Armenia': Report by the Council of Europe's Parliamentary Assembly; Doc. 15432, 10 January 2022; available at: <https://pace.coe.int/en/files/29803>, p. 125.

33 According to the Datalex.am unified portal the cases are still pending at the time of drafting this Report (8 February, 2022).

34 See the 'Annual report of CPFE on Situation with Freedom of Expression and Violations of Rights of Journalists and Media in Armenia, 2021, available at: <https://khosq.am/reports/hայաստանում-խոսքի-ազատության-վիճակի-28/>.

35 The defendant can be released from the obligation to publish retraction and paying compensation in case of satisfaction of the claimant's demand before filing a claim with the court, as well as in case of quoting other sources, referring to claimant's statement or if there is a public interest in disclosing potentially defamatory information about a person or an organisation.

decriminalisation of defamation significantly improved the protection of journalists and editorial staff from criminal prosecution on political grounds. At the same time, the introduction of civil liability for libel and insult, and the introduction of relevant compensation for moral damage resulted in an increase in the number of court cases against media and journalists. According to the annual report published by the CPFE, there were 61 new lawsuits against journalists and media outlets; notably, in 2021 only, in 25% of these cases, the claimants were politicians and public officials.

According to Article 1087.1 of the Civil Code, a claimant may request a retraction of publication or statement, and up to AMD 6 million (approximately EUR 10,600) monetary compensation according to the legislative amendments of March 2021. The legal initiative of the speaker of the Parliament envisioned tripling the fines for libel and insult. It was adopted by the National Assembly in March 2021 and was criticised by the journalistic community who described the amendment as “extremely dangerous.”³⁶ This amendment was passed despite the reservations of the Minister of Justice, the Human Rights Defender, and civil society representatives. It was particularly criticised for its potential to prompt the media to exercise self-censorship and for implicitly encouraging prominent figures sensitive to criticism to use this financial threat to deter any unwanted scrutiny. Local and international human rights organisations have criticised the legislative initiative in their public statements, stating that it jeopardises both freedom of speech and the financial viability of the media, and urged the authorities to refrain from attempts to create an unhealthy information environment through penalties against free speech.³⁷

The President of the Republic of Armenia, Armen Sargsyan, did not sign the draft law in April 2021 and applied to the Constitutional Court for review.³⁸ In particular, the President mentioned that the amendments would not solve any systemic problems, but might significantly damage freedom of expression and restrict the possibility of mass media to objectively criticise the activities of officials and politicians.³⁹ In October 2021, the Constitutional Court found that the draft complies with the Constitution and the law entered into force. Leading journalistic organisations issued a joint statement expressing concerns about the Constitutional Court’s decision. They announced that “this amendment is extremely dangerous, especially if we take into account the propensity of the representatives of the state authorities, politicians and other public figures to perceive even objective criticism as insult and defamation and apply to the court. If we add to this the total lack of independence of the judiciary, judgments following such complaints may become fatal for the further activities of the media.”⁴⁰

36 CPFE, <https://khosq.am/en/2021/03/24/statement-76/>.

37 “Armenia: New Amendments Threaten to Stifle Media Freedom and Freedom of Expression,” Freedom House, March 26, 2021, <https://freedomhouse.org/article/armenia-newamendments-threaten-stifle-media-freedom-and-freedomexpression>

38 The President did not sign the law increasing the fines for insult and defamation, and applied to the Constitutional Court, April 15, 2021, Azatutyun.am, available at [<https://www.azatutyun.am/a/31204903.html>]

39 <https://csometer.info/updates/armenia-concerns-about-freedom-expression-after-constitutional-court-decision>

40 FOICA, <http://www.foi.am/en/news/item/2102/>.

Furthermore, in July 2021, “grave insult” was criminalised, and a new article 137.1 was added to the Criminal Code, which provided the definition and the criminal liability for it. It stipulates fines ranging from AMD 1 to 3 million (approximately EUR 2,500 to EUR 5,000) and a maximum prison sentence of three months. The journalistic community and the Human Rights Defender criticised this legislative initiative. “The article on severe insult in the Criminal Code is extremely worrying, although cursing or insulting a person is not acceptable to me in any case. I have warned many times that such an article [137.1] should not be accepted, that the wrong way of fighting has been chosen, that new problems will arise” the Human Rights Defender (Ombudsman) said in a January 2022 Facebook. The journalistic community complained that the draft had not undergone any public discussion, but even though it was proposed by the parliament, it had not been posted on the e-draft platform. The draft was included in the extraordinary session of the last working day of the Parliament and was approved in two readings on the same day. In the media experts’ assessment, this is a hastily made decision in an atmosphere of secrecy, which has not been discussed with the professional community. In terms of content, this is a step back from 2010 legislative amendments, when libel and insult were decriminalised.⁴¹

As of 31 December 2021, i.e., in the first five months after its adoption in July 2021, a total of 263 criminal cases had been filed based on this new article. One of these was related to a media publication, although the case was later suspended. In the majority of the cases, the ‘grave insults’ were addressed to the Prime Minister or other high-ranking officials.⁴² According to the Annual Report of the Human Rights Defender, criminal proceedings were initiated against 60 persons; in the framework of these criminal cases, 49 persons had the status of defendants, 11 persons had the status of suspects, detention was chosen as a measure of restraint for one of them, and the signature of not leaving was chosen as a measure of restraint for 58 persons.⁴³ On 3 February 2022, the first verdict was made by the court on the grounds of grave insult.⁴⁴ The enforcement of this legislation signifies a clear degradation of democratic norms in Armenia and creates a chilling effect for free expression according to Armenian human rights watchdogs, who also called “on the parliament to revoke this law that so brazenly violates the principles enshrined in the Armenian Constitution, the country’s OSCE commitments, and the European Convention on Human Rights to which it is party.”⁴⁵ The Human Rights Defender of Armenia applied to the Constitutional Court to check the

41 ARMENIAN PARLIAMENT ADOPTS BILL CRIMINALISING SWEARING, CSO METER,

[HTTPS://CSOMETER.INFO/UPDATES/ARMENIAN-PARLIAMENT-ADOPTS-BILL-CRIMINALISING-SWEARING.](https://csometer.info/updates/armenian-parliament-adopts-bill-criminalising-swearing)

42 POLICE INVESTIGATING ‘INSULTS’ AGAINST ARMENIAN PM, A COVERAGE BY THE RADIO LIBERTY,

[HTTPS://WWW.AZATUTYUN.AM/A/31507699.HTML](https://www.azatutyun.am/a/31507699.html)

43 Annual Report of the RA Human Right Defender, 2022.

https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf?fbclid=IwAR3P103mfKBV8tgGueflhRrQhPtW99rrIGpPZnrXoCgL_ETMahTQ4igUgtg, page 405

44 RA General Prosecutor office news:

https://www.prosecutor.am/am/mn/8445/?fbclid=IwAR2rkU0rQEYwUhcY0_qZUFMVTUs-Nv0DPt5GL5PlkwiTqVAhNpibWeultl0

45 See the statement by Andranik Shirinyan, the Armenian project coordinator of human rights watchdog

Freedom House, available at <https://oc-media.org/armenian-citizen-fined-for-insulting-pashinyan/?fbclid=IwAR2kBW7BnvP82g3HIOzRniGXfjTU-DtflNKhgBSQ3FwLyZnjShFYWjySFRE>.

constitutionality of the article 137.1 of the Criminal Code defining “grave insult”. The Court session is scheduled for 22 March 2022.

The experts have observed a growing trend on criminalisation of speech incidents in Armenia, which is clearly not aligned with international legal, including Council of Europe standards. The instrumentarium of criminal law aimed at countering (foreign) political tensions of the war and the aftermath, as well as the societal challenges fighting the pandemic, criminalisation of speech acts is legally disproportionate and inadequate in terms of the policy.

4. The protection of journalists’ rights

4.1 Overview

There are several layers of limitations to the rights of journalists in Armenia, hindering them in fulfilling the democratic mission of their journalistic work.

The state of emergency declared in Armenia in March 2020 (to prevent the spread of the novel coronavirus, which imposed restrictions on some media outlets), and the war in Nagorno-Karabakh in autumn of 2020 (as a result of which severe restrictions were imposed, especially on the media, not allowing full coverage) have significantly transformed the media sector and the framework of journalists’ rights.⁴⁶ Both during the state of emergency due to the pandemic and during martial law, a governmental decree banned the publication of any but official information in media outlets and on social media, too. Moreover, the fact that the implementation of these decrees was controlled by law enforcement agencies, interfering in the activities of the media, often with subjective and arbitrary approaches, caused a lot of concern. 2020 was a critical period for the Armenian media and journalists.⁴⁷

Reporters without Borders reflects in its 2021 analysis that “in Armenia, the proclamation of a public health state of emergency was accompanied by draconian measures, including a requirement for the media to quote only government sources. In response to the ensuing outcry and protests by journalists, the controversial rules were softened and finally scrapped a few days later.”⁴⁸

2021 was marked by the extremely tense socio-political situation after the war; the snap parliamentary elections; and the pandemic. Unprecedented restrictions were posed towards journalists covering the National Assembly. Journalists accredited to the National Assembly discovered that they can no longer interview lawmakers coming out of the parliament

46 *The Mapping of the Media in Armenia in the Context of the Fight Against Dis/Misinformation, FOICA, <http://www.foi.am/en/research/item/2184/>, page 10.*

47 ANNUAL REPORT OF CPFE ON SITUATION WITH FREEDOM OF EXPRESSION AND VIOLATIONS OF RIGHTS OF JOURNALISTS AND MEDIA IN ARMENIA-2020, CPFE, [HTTPS://KHOSQ.AM/EN/REPORTS/ANNUAL-REPORT-OF-CPFE-ON-SITUATION-WITH-FREEDOM-OF-EXPRESSION-AND-VIOLATIONS-OF-RIGHTS-OF-JOURNALISTS-AND-MEDIA-IN-ARMENIA-2020/](https://khosq.am/en/reports/annual-report-of-cpfe-on-situation-with-freedom-of-expression-and-violations-of-rights-of-journalists-and-media-in-armenia-2020/)

48 RSF 2021 Index, <https://rsf.org/en/rsf-2021-index-no-antidote-disinformation-media-control-virus-eastern-europe-and-central-asia>.

chamber or approach the offices of deputies from the ruling Civil Contract party located in a large section of the parliament building.⁴⁹

On 10 February 2022, the Human Rights Defender of Armenia published an “*Ad hoc* report on the restrictions on the professional work of journalists in the National Assembly and on inadmissible acts of public officials against journalists”.⁵⁰ The *ad hoc* report questioned the legality of the restrictions applied on the basis of the disputed regulations, and the rules for ensuring the professional activities of journalists. The report registers the lack of concrete and clear legal regulations which, or on the basis of which, the peculiarities of the activities of the journalists accredited in the building of the National Assembly can be fixed. The measures for responsibility have no legal grounds; they have not been fixed by the law; and are not clear to the journalists themselves—with negative consequences (chilling effects) to reporting. In addition to this, journalists have not been informed about the restrictions on their professional activities, including the limits of the restrictions and any negative consequences of not following them. These developments were criticised also by the professional community. The CSOs published several public announcements⁵¹ on the applied restrictions and scrutinised the inadmissible behaviour and acts of security servicemen of the National Assembly against journalists, including making unlawful demands towards journalists under threats (demands to delete journalistic materials without substantiation, threats of deprivation of accreditation).⁵²

4.2 Access to information

Journalists’ access to information is regulated under the 2003 Law on Freedom of Information (hereinafter: FOI Law). The FOI Law defines general rules for requesting public information by all categories of professionals (journalists, attorneys, civil society activists), as well as by the general public. The FOI Law requires public authorities to publish certain categories of information proactively, such as their annual budget or reports. It also requires public authorities to provide online templates for FOI requests on their official websites, and to process written requests received from citizens and organisations within five days after the filing of an application. The response time can be extended for up to 30 days, but only if the public authority needs additional time for the processing of the requested information. Moreover, the FOI Law stipulates that each institution should appoint an FOI officer who is responsible for the provision of information and for the proper implementation of the legal requirements, as well as for adhering to international access to information standards.

However, despite the precisely defined procedures and rules for filing and processing of information stipulated by the FOI Law, effective enforcement mechanisms are lacking, which

49 ARMENIAN JOURNALISTS FACE MAJOR RESTRICTIONS IN PARLIAMENT, A COVERAGE BY RADIO LIBERTY, <https://www.azatutyun.am/a/31390086.html>

50 Ad hoc report of the RA Ombudsman on the “Restrictions on the professional work of journalists in the National Assembly and the inadmissible acts of public officials against journalists”, <https://ombuds.am/images/files/a40f8132dd39d17f27fd7c0ffd2f53d6.pdf>

51 CPFE, <https://khosq.am/en/2021/08/03/statement-85/>

52 CPFE, <https://khosq.am/en/2021/08/25/statement-88/>

hinders the meaningful enjoyment of the rights to freedom of information. In many cases, the state agencies provide vague, incomplete or late answers. The 2021 statistics of the professional civil society organisation Freedom of Information Centre of Armenia (FOICA) show that in many cases, information requests received incomplete answers (16%); mute refusals (2%), i.e., no official answer was provided; or non-legitimate refusals/non-appropriate answers (7%). “Although the response rate increased and the overall number of mute refusals decreased in 2021, vague or incomplete answers have significantly increased. In some cases, reporters received answers which were so unclear as to be useless. And they cannot use that information for their stories.”⁵³

Media representatives also complain that public officials and private companies often refuse to provide the requested information with reference to its confidentiality or secrecy, without proper justification or legal reference. State agencies often refer to privacy as a ground for information refusal, misusing data protection laws as a ‘shield’, thus hampering the disclosure of violations, abuses or frauds (52% of all refusals in 2020), which was referred to even more often than the claim of state secrets (39%).⁵⁴ Around 15% of information requests were delayed, violating the five-day time frame set by the law. Although the civil society observations show that late answers are not due to a tendency to hide information, but mainly because of the low quality of the administration and a lack of internal coordination, late answers create an easy path for disinformation to flourish.⁵⁵ As mentioned in the 2021 Annual Report of the Human Rights Defender, “all this not only leads to the violation of the deadlines set by law, but also contributes to the spread of misinformation. Therefore, the state's public communication policy is of paramount importance in combating misinformation or false information.”⁵⁶

Accordingly, the Prime Ministers’ Office confirmed the critical need for the re-organisation of the state’s public information system (previously it was already addressed as part of the public administration reform). They have emphasised the need for the key public agencies on specific training and support in becoming better and trustworthy partners of citizens.

The Unified Platform of Electronic Inquiries (www.e-request.am) was launched by the Government⁵⁷ and serves for submitting and tracking online applications, requests or complaints to state authorities. The administrative fee for obtaining complete information about any organisation from the State Register is AMD 3,000 AMD (EUR 5,40)⁵⁸. Media

53 Access to Information of the Media, 2021, <http://www.foi.am/en/articles/item/2030/>

54 Ibid.

55 Access to Information for the Media, Shushan Doydoyan, FOICA, <http://www.foi.am/en/articles/item/2030/>

56 Annual report 2021, RA Human Rights Defender, https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf?fbclid=IwAR3P103mfKBV8tgGuefIhRrQhPtW99rrIGpPZnrXoCgL_ETMahTQ4igUgtg, page 383.

57 The procedure for registration, classification and maintenance of information developed by or delivered to the information holder, Appendix to the RA Government Decision No. 1204-N dated 15.10. 2015, last amended 26.11.2020, <https://www.arlis.am/DocumentView.aspx?DocID=147567>

58 RA Law on State Duty, 27.12.1997, last amended 15.07.2021, Article 20, <https://www.arlis.am/documentview.aspx?docid=156928>

organisations were exempted from the fee; however, it is burdensome for CSOs engaged in watchdog and monitoring activities.

The other component of access to information is proactive transparency of the state agencies. The free flow of information places a positive obligation on the state to proactively publish information of public interest in the public domain, and to promote diverse sources of information, including media freedom. Proactive publication of information ensures higher public trust and confidence towards state agencies, as well being a valuable tool for countering disinformation.⁵⁹ Access to regularly updated data on official websites of public institutions ensures that journalists can easily obtain data and make their own analysis. Proactive disclosure rules are provided for by the FOI Law Article 7, requiring the publication of 13 categories of information. There has been general progress in terms of proactive publication of information. However, many government agencies still do not fully grasp the importance of proactively publishing information at their own initiative. None of the official websites contain the full scope of information that government agencies are required to make public in accordance with the FOI Law. Many official websites do not contain some essential information. In many cases, the available information is not easily accessible or is out of date. A significant part of information is not really accessible, even though it is published, because it is very difficult for users to find what they are looking for. Most of the official websites are not accessible for people with visual impairments.⁶⁰

Contesting FOI refusals or inappropriate responses by state authorities is burdensome, and the administrative appeal mechanism is not effective. When complaining to a higher official, the complaint is often forwarded to the person against whom the complaint was filed, usually resulting in upholding the decision of the first instance. This practice is widespread, despite being in violation of the law.

Legally challenging FOI decisions could be initiated through judicial appeals. Once journalists' FOI rights are violated, they need to file legal complaints to the courts, whereby the judicial procedures could take up to several years, after which the receipt of the requested - usually outdated - information becomes obsolete. Therefore, the judicial cases are rather pursued to set precedents about the application of the FOI Law. Furthermore, these procedures are also financially burdensome, as several media outlets and organisations are unable to afford them. Meanwhile, courts are reluctant to pose administrative liability on the officials who violated FOI law. An administrative penalty was applied in exceptional cases. Although there are criminal liability regulations, no official carried a criminal liability for violating the rights of journalists to information.

In December 2021, the Ministry of Justice gave a positive conclusion to a petition submitted by the FOICA aimed at increasing the amount of administrative responsibility for violating the right to information.⁶¹ The petition included a proposal on amending the Code on

59 Disinformation and freedom of opinion and expression Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, 2021 <https://undocs.org/A/HRC/47/25>

60 Shushan Doydoyan, Evaluation of Official Websites of Government Bodies, Yerevan 2020, http://www.foi.am/u_files/file/TA%20patasxanatuner/Web-site-Audit-Report.pdf

61 Success Stories, FOICA, <http://www.foi.am/en/Success/item/2186/>

Administrative Penalties and put forward a draft which proposed to impose an administrative fine between AMD 30,000 (EUR 55.50) and AMD 70,000 (EUR 130) for violation of the right to receive information, and in case of repeated violation - to an amount between AMD 100,000 (EUR 185) to AMD 150,000 (EUR 278). The Ministry of Justice welcomed this initiative, which could also be seen as a positive example of collaboration between civil society and the government to strengthen liability for FOI breaches.

Extrajudicial protection mechanisms, such as the function of an information commissioner, are lacking in Armenia.⁶² According to international best practices, the institutionalisation of this function could be the most effective and impartial mechanism and an independent review of violations of the rights of access to information. The information commissioner's main functions should include setting up a monitoring system on the compliance with the law and the relevant standards; and receiving and examining complaints about violations of access to information rights. He/she would also promote proper and unified implementation of the law; raise public awareness about legal provisions and the rights it creates for citizens; and publish a central annual report on access to information implementation practice. This independent body should also set standards and provide training for the addressees of the law.

In June 2020, the Government signed the Council of Europe Convention on Access to Official Documents⁶³ (hereinafter: the Tromsø Convention) which by the end of March 2022 was in the process of its ratification.⁶⁴ The Tromsø Convention, a new Council of Europe instrument, entered into force in December 2020 and became the first binding international legal instrument which recognises a general right of access to official documents held by public authorities. Thus, the Tromsø Convention constitutes a milestone in the process of promoting democratic governance, openness, participatory democracy and in the exercise of other human rights and fundamental freedoms.⁶⁵ On 28 February 2022, the Constitutional Court confirmed its compliance with the Constitution of the Republic of Armenia.⁶⁶ It is of high importance that the government is committed to ratify the Convention aimed at fully guaranteeing freedom of information and bringing the domestic legislation and practice in line with international standards. However, there is a knowledge and implementation gap among various stakeholders, including journalists and the judiciary, about the Convention.

The area of FOI needs further development in Armenia. The Government would benefit from support to monitoring and promoting the implementation of the FOI Law, and, after an appropriate impact assessment, follow up with necessary legislative steps. Also, media organisations and CSOs will need

62 Brief on the Role and Importance of Access to Information Oversight Bodies, Toby Menvel, 2019, <http://www.foi.am/en/articles/item/1713/>.

63 See the Council of Europe Convention on Access to Official Documents (CETS No. 205), also known as the Tromsø Convention.

64 The RA Government decree, available at: https://www.e-gov.am/gov-decrees/item/37383/?fbclid=IwAR2IXIWraA8X1JV3oUPU4FXxdZP8v_-vJWi3vxfakBBGEwIgsK9r4NAMyMi4

65 Text of the Convention, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=205>

66The RA Constitutional Court Decision on compliance, https://concourt.am/decision/decisions/621c9725e9ef7_sdv-1632.pdf?fbclid=IwAR1X15C9rN2viWF6HTNbiG4C21j3wwMH7S-1IBZEweyqvyyxMjnlZP3S0kBO.

support to initiate precedential legal actions and cases including independent review mechanisms, in order to shape the contours of the FOI Law implementation. Furthermore, it is recommended to consider the establishment of the institution of a FOI commissioner in order to ensure systematic and independent review, monitoring and the promotion of a unified implementation practice.

4.3 Safety of journalists and strategic lawsuits against public participation (SLAPP)

Safety of journalists is a concern in Armenia, although the professional rights of journalists are protected under Article 164 of the Criminal Code. According to the rules, preventing journalists from fulfilling their professional obligations (responsibilities), or forcing them to publish or not to publish their reports is punishable by fines or imprisonment for up to three years, if committed by an official, or up to eight years if the accused person endangered the life or health of a journalist or his/her family. In addition, according to Article 149 of the Criminal Code restricting journalists' rights during elections is punishable with up to three years of imprisonment. In 2021, 18 cases of physical threats and violence against journalists were registered,⁶⁷ and Armenian stakeholders emphasised that online harassment against female journalists was an emerging threat undermining the safety of women in the media. In many cases, threats of violence and attacks against journalists are not properly investigated. Not even attacks of previous years have been followed up, nor revealed by the law enforcement bodies, and no person was convicted to be criminally liable for attacking journalists. This impunity emboldens the perpetrators of the crimes and at the same time, has a chilling effect on society, including journalists. In recent years, however, there has been decrease in physical violence and attacks against journalists.

Digital security is another area of concern. In December 2021, Meta⁶⁸ and The CitizenLab⁶⁹ published a joint investigation, in which Armenia appeared for the first time as a state among countries using spyware. Armenia is believed to have used the software Cytrox's Predator, which targets people to collect data; manipulate it; and disable their devices and internet accounts.⁷⁰ In 2019, the Threat lab run by the Media Diversity Institute of Armenia registered 32 digital security incidents against civil society and media, while in 2020, the number was 51. The majority of the targeted attacks researched in 2019 were directed against NGOs, while in 2020 the media were the top target. Hackings of websites and of official Facebook pages of media outlets were pervasive, accompanied by online harassment against the journalists, including phishing incidents. The experts encountered a number of attempts to obtain sensitive information or data, such as usernames; passwords or other sensitive details; by impersonating as a trustworthy entity in email spoofing; and instant messaging. Surveillance of media representatives was a growing and a new threat endangering privacy and personal

67 Annual report, CPFE, 2021.

68 Threat report on the Surveillance, Meta, <https://about.fb.com/wp-content/uploads/2021/12/Threat-Report-on-the-Surveillance-for-Hire-Industry.pdf>.

69 Pegasus vs. Predator, <https://citizenlab.ca/2021/12/pegasus-vs-predator-dissidents-doubly-infected-iphone-reveals-cytrox-mercenary-spyware/?fbclid=IwAR1wJISpzRJUPDzTinuxS2PHHLX3kOdAkpEmIvJPj70u2A00Qdy44Za41Q>

70 Armenia Among Spyware Users, <https://media.am/en/newsroom/2021/12/21/31193/>.

security of journalists.⁷¹ The researchers recommended the media and other civil society groups to start developing risk management systems and make sure that the top management is engaged in developing risk assessments, holding IT audits at their organisations.⁷² Another recent case happened in early 2022 when unknown individuals hacked the Facebook pages of news media outlet 1in.am (which has 1.7 million followers) and the 1in.am news site, and the editorial staff lost access to their page management system. Having a large audience, the hacking of this kind of platform is a significant issue and a national level threat for the society.

Another important aspect related to the safety of journalists was the media work in the 2020 Nagorno-Karabakh war. The majority of journalists covering the hostilities did not have the capacity, knowledge or experience in war reporting. Three reporters have been wounded and a fixer was killed because of shelling by Azeri military force' drones. The UK-based NGO Media Defence filed a case to the ECtHR in March 2021, to appeal the case of violation of journalists' right to live and to freedom of expression during the war.⁷³ The Human Rights Defender published an *ad hoc* report regarding media professionals' rights violations during the war.⁷⁴

The criminalisation of defamation (see section 3.4) was systematically used against journalists in the forms of defamation and libel lawsuits, which created severe threats on press freedom. In 2021 there have been 61 new lawsuits filed against various media outlets and individual journalists⁷⁵, and to a large extent public officials were among those who sued the media for defamation and insult (about 25% of the plaintiffs in those cases were public figures and officials). These proceedings could lead to the 'weaponisation' of the law against the media, referred to Strategic Lawsuits Against Public Participation (SLAPP). There is a growing trend in Europe of lawsuits to censor, harass and ultimately suppress critics, targeting usually journalists, activists, and advocacy groups -in a systemic and strategic manner with the aim to silence political dissent and scrutiny. Plaintiffs usually do not expect to win at the courts, but they use the civil and criminal lawsuits aimed at damaging the credibility of criticism, and endanger the financial capacity and the human resources of media outlets and of CSOs with standing on legal proceedings. SLAPPs were condemned by the Council of Europe⁷⁶ and an appropriate standard (recommendations) will be put forward. Moreover, the European Union (EU) addressed the damaging impact of SLAPP to democracy, and the European Commission was invited to propose an anti-SLAPPs Directive that would protect independent media from

71 Digital security incidents against the Armenian Civil Society in 2019 - 2020, page 9: https://mdi.am/wp-content/uploads/2021/02/Digital%20security%20incidents%20against%20the%20Armenian%20Civil%20Society%20in%202019%20-%202020_Artur%20Papyan.pdf?fbclid=IwAR1Y_Mwz2NlcFhbiKFFh9AbaoJ8ol84B9L9QvdEnjwi4B-6ZqdAPNsJRf0M.

72 Ibid, page 14.

73 *Media Defence files case against Azerbaijan at ECtHR over bombing of journalists in Nagorno-Karabakh*, FOICA, <http://www.foi.am/en/news/item/1998/>.

74 Ad hoc Public Report on Targeting Journalists <http://www.foi.am/en/news/item/1954/>

75 Annual report, CPFE, <https://khosq.am/reports/hայաստանում-խոսքի-ազատություն-վիճակի-28/>.

76 See the Council of Europe 'HUMAN RIGHTS COMMENT' 'Time to take action against SLAPPs (2020)', available at: <https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps>.

vexatious lawsuits aimed at silencing or intimidating them.⁷⁷ Also, a dedicated expert group was set up in 2021 to put forward recommendations to the Member States.⁷⁸

In the Armenian context, SLAPP became a possible and meaningful threat to media freedom since the criminalisation of defamation. In March 2021 the National Assembly approved in its second and final reading a threefold increase in maximum damage awards set for civil defamation cases. Media outlets and individuals convicted of libel and insult could be fined as much as 6,000 statutory minimum wages (equivalent to about AMD 6 million or EUR 10,600) while those making offensive claims will face a maximum fine of up to 3,000 statutory minimum wages (equivalent to about AMD 3 million or EUR 5,500). The amendments were not signed by the President, who sent them to the Constitutional Court for review amidst criticism by media organisations and experts, as well as international human rights organisations, who found these sanctions disproportionate. However, in October 2021, the Constitutional Court ruled that the amendments are in line with the constitution.⁷⁹ According to the journalistic community and organisations, this was a regressive change and it would have a negative impact on the media environment threatening financial and economic stability of the media.⁸⁰ These expensive lawsuits brought against the media were perceived as attempts at silencing and harassing journalists and the critical media with the potential of “chilling effects” on the press in Armenia.

Furthermore, in July 2021, the amendments to the Criminal Code and Criminal Procedure Code were also adopted, criminalising swearing as a ‘severe/grave insult.’⁸¹ These amendments created another potential legal ground for SLAPPs, threats to severe fines ranging from AMD 100,000 to AMD 500,000 AMD (EUR 170 to EUR 860), with more fines and up to two months detention in case of aggravating circumstances. The journalistic community and the Human Rights Defender criticised this amendment. In total 263 criminal cases have been filed based on this new article since its adoption in July 2021, one of them was related to a media publication but later the case was suspended. In the majority of the cases, the ‘grave insults’ were addressed to the Prime minister or other high-ranking officials. On 3 February 2022 the first verdict was made by the court on the ground of grave insult.⁸² The enforcement

77 See the initiative of the European Parliament, available at: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders>.

78 See the Expert group against SLAPP (E03746), available at: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=3746>.

79 Draft history, RA National Assembly, http://parliament.am/draft_history.php?id=11748&lang=arm

80 CPFE, <https://khosq.am/en/2021/10/11/statement-89/>

81 RA Criminal Code, 18.04.2003, last amended 30.07.2021, article 137.1, <https://www.arlis.am/DocumentView.aspx?DocID=155365>

82 RA General Prosecutor office news: https://www.prosecutor.am/am/mn/8445/?fbclid=IwAR2rkU0rQEYWUhcY0_qZUFMVTUs-Nv0DPt5GL5PlkwiTqVAhNpibWeultj0

of this legislation signified a clear degradation of democratic norms in Armenia and created a chilling effect on free expression according to Armenian human rights watchdogs.”⁸³

The situation of journalists’ safety deteriorated in Armenia over the past period, and they were exposed to physical and verbal attacks, online and offline, often targeting specifically women working in the media. Moreover, newly emerging threats in forms of strategic lawsuits (SLAPP) utilising recent criminalisation of speech acts endangered the freedom of the media and the independent work of journalists.

4.4 Gender equality in journalism in Armenia

Gender equality in the media sector is suffering from various limitations and restrictions affecting women. Working and employment conditions, and opportunities for career development are generally and specifically unfavourable to women. ‘Feminisation of the media’ was reported by stakeholders, who claimed that ‘9 out of 10 journalists were women’, since the reputation of the journalistic profession was very low, precarious and the working conditions vulnerable and jobs badly paid. These conditions in the Armenian journalistic sector forced women into this profession: “Journalists are more and more women, very similar to teachers in schools: no men would like to do the job.” These claims were underscored by regional studies and datasets analysing the gender aspects of employment and career in the media sector.⁸⁴

However, despite the increasing employment of women in the media sector, “the general tone and the agenda are still being set by men, because they occupy most of the executive positions in mass media.”⁸⁵ In Armenia, this was also “reflected in a ‘gender pyramid’ of power and influence: the more power - the more men,” whereby the smaller the influence a media outlet has on its audience and the lower the position, the more women, and such gender allocation in employment led to disparities in salaries. “On top of that, there is not only a gender gap in salaries where men occupy a better position, but there is often direct discrimination against women.”⁸⁶

Moreover, limitations in professional fulfilment (“glass walls”) were also detected, whereby women tend to specialise in topics that are less well-paid, such as social issues.⁸⁷ Also, hostility against female employees is a relatively widespread phenomenon in Armenia (around 60% of all respondents have experienced hostility while performing their professional duties).⁸⁸

83 See the statement by Andranik Shirinyan, the Armenian project coordinator of human rights watchdog Freedom House, available at <https://oc-media.org/armenian-citizen-fined-for-insulting-pashinyan/?fbclid=IwAR2kBW7BnvP82g3HIOzRnfGXfjTU-DtflNKhgBSQ3FwLyZnjShFYWJySFRE>.

84 See the ‘Gender aspects of employment and career in the media sector of Armenia, Georgia, Moldova, Russia and Ukraine - Comparative Analyses’ (2020) by the Fojo Media Institute, Stockholm and Kalmar, available at: <https://fojo.se/wp-content/uploads/2020/08/Gender-report-2020-ENG.pdf>.

85 Ibid., p. 12.

86 Ibid.; p. 12.

87 Ibid.; p. 12.

88 See the ‘Gender aspects of employment and career in the media sector of Armenia, Georgia, Moldova, Russia and Ukraine - Comparative Analyses’ (2020) by the Fojo Media Institute, Stockholm and Kalmar, available at: <https://fojo.se/wp-content/uploads/2020/08/Gender-report-2020-ENG.pdf>; p. 16.

Similar to ageism - the share of youth among journalists is over 30% - the experts conclude that freedom of expression in a gendered perspective was severely limited and restricted, and media freedom - in a holistic gendered conceptualisation - was also curbed by multiple layers of gender-based discriminations.

5. Hate speech

Armenian public authorities and stakeholders reported intensified waves of hate speech and aggressive discussions especially on social networks. Many media professionals, public authorities and civil society activists expressed their concerns regarding the increased intolerance and hate speech in Armenian society in general, and particularly in social media. According to the office of the Human Rights Defender, intolerance towards political opponents in the media and hate speech in political discourse in social media are observed very often.⁸⁹ “There has been an increase in dangerous hate speech and calls for violence during the 2021 rallies. This situation has been observed even more on social networks.”⁹⁰ “The whole Armenian domain of social media has been flooded with swearing insults, threats against each other and hate speech, completely violating the human rights.”⁹¹ Both human rights activists and public officials note that the hostile tone of some media negatively impacted public discussions and escalated intolerance and hostility toward certain groups of the society.

The definition of hate speech in Armenian legislation is complex. As of March 2022, Article 226 of the Criminal Code regulates hate speech by prohibiting actions aimed at the incitement of national, racial or religious hostility, at racial superiority or humiliation of national dignity. This offence is aggravated if it is committed, inter alia, publicly or by mass media. In April 2020, this offence was supplemented by the new and more complex Article 226.2 which prohibits the public call for violence against a person or group of persons based on sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, ideology, political or other views, affiliation to national minority, property status, origin, disability, age or other personal or social ground, including such acts as publicly justifying or advocating such violence. Article 226.2 is designed as a gap-filling piece of legislation given that calls to violence are already outlawed elsewhere in the Criminal Code. As such, Article 226.2 expressly excludes from its scope any acts and speech which are already covered by other legislation. There could be an argument for saying that not much is left for Article 226.2 to deal with given that it is so narrowly focussed on violence.⁹²

In practice, Article 226 has rarely been used. The court practice annual statistical reports provide no data from 2015 to 2021 of judgments delivered under Article 226. One of the

⁸⁹ News coverage by the Radio Liberty, <https://www.azatutyun.am/a/30606296.html>

⁹⁰ Annual Report of the RA Human Rights Defender, https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf?fbclid=IwAR3P103mfKBV8tgGuefIhRrQhPtW99rrIGpPZnrXoCgL_ETMahTQ4igUgtg, page 387.

⁹¹ Ibid.; page 390.

⁹² Comparative Study on Hate Speech Laws and Armenian legislation, <https://rm.coe.int/final-report-on-reforming-armenian-hate-speech-laws-en-1-/pdf/1680a0b84e>.

reasons for this is the fact that it protects only nationality, race and religion. Article 226.2, by contrast, adopts a more modern law-making approach and lists a much wider group of protected characteristics. The inclusion of ‘other personal and social grounds’ also makes it non-exhaustive, thus mirroring the wording and approach of Article 77 and Article 29 of the Constitution, and as such, reflects the concept of the general prohibition of discrimination in Protocol 12 of the European Convention of Human Rights which Armenia has ratified. According to the information provided by the RA General Prosecutor's Office to the Freedom of Information Center, in 2021 17 criminal cases were filed according to Article 226.2 of the Criminal Code and none of them was filed against a media representative.⁹³ Under the current draft Criminal Code (as of March 2022) and a newly proposed hate speech Article 314, any action aimed at ‘the incitement of national, ethnic, racial, political, ideological or religious hostility, hatred or intolerance, as well as the incitement of hatred, intolerance or hostility against another social group, is criminalised. However, in so far, there seem to be no rules applicable to hate speech neither in Armenian civil, nor in administrative law.’⁹⁴

In July 2021, “grave insult” was criminalised and a new Article 137.1 was added to the Criminal Code defining the definition and criminal liability for it. Authorities justified this amendment with an aim to reduce the level of hate speech (see details under section 4.2). However, criminalisation of speech is an inappropriate and inadequate response to the complex social-political phenomenon of hate speech. CSOs and other watchdog groups – who were not consulted on the amendments⁹⁵ - also warned about discretionary application of the new rules disproportionately protecting public officials. Other media experts pointed to potential contradictions with the PACE Resolution 1577⁹⁶ on defamation and argued about legislative ‘backsliding’ in terms of criminalisation of speech but recommended the enhancement of media literacy skills and the strengthening of the role of education instead in countering hate speech.⁹⁷

The Human Rights Defender notes in his annual Report 2021 that, unfortunately, hate speech had acquired a systemic nature, in the solution of which public figures have a major role to play through their personal example.⁹⁸

93 Freedom of Information Center, NGO, <http://www.foi.am/hy/news/item/2195/>.

94 See the Council of Europe mandated ‘Comparative study on hate speech laws and Armenian legislation by Chara Bakalis and Ara Ghazaryan’; September 2020. Available at: <https://rm.coe.int/final-report-on-reforming-armenian-hate-speech-laws-en-1-/pdf/1680a0b84e>.

95 Coverage by Factor TV, https://factor.am/429974.html?fbclid=IwAR0cjejRCInckXPtVGEf63VOrKqaOHAwgTjr8JpxEP8cw0nhTNMMGp_cYIPE, <https://www.youtube.com/watch?v=xDtujLl7HB4>, <https://www.youtube.com/watch?v=U-tBIQFGUf8>

96 PACE Resolution 1577 (2007), <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17588&lang=en>

97 CSO Meter, <https://csometer.info/updates/armenian-parliament-adopts-bill-criminalising-swearing>

98 Annual Report of the RA Human Rights Defender, https://ombuds.am/images/files/022666474d87ff84a86acf39be58bec8.pdf?fbclid=IwAR3P103mfKBV8tgGuefIhRrQhPtW99rrIGpPZnrXoCgL_ETMahTQ4igUgtg, page 386.

In this regard, the efforts of the state to create such a strong legal basis for the fight against hate speech are extremely important, which, in any case, will ensure the necessary balance between freedom of speech and the protection of the rights and dignity of others.

Meanwhile, media self-regulatory instruments attempted at filling the legislative gaps. Owing to the absence of a hate speech framework in civil and administrative statutory laws, a number of professional unions have attempted to self-regulate in order to prohibit hate speech in their particular sphere of activity. For example, 47 media outlets have jointly adopted the Code of Ethics for the Armenian Media and Journalists which provides clauses on the prohibition of prejudice on the ground of race, age, religious, nationality, sexual orientation, physical handicap, etc. (article 5.1), the prohibition of promoting ethnic or religious hatred and intolerance, or any discrimination on political, social, sexual grounds, or hate speech (article 5.2.) and the prohibition of advocating violence, war, denial of genocide and crimes against humanity. In May 2017, the Media Ethics Observatory issued Guidelines on the ‘Exclusion of Manifestations of Discrimination and Ensuring Tolerance in the Media’ which contains articles about the prohibition of hate speech. Several other media outlets, such as “Aravot” daily newspaper, have adopted their own ethics norms, which, as a rule, stipulate the prohibition of discrimination and hate speech. The “Internet Society” non-governmental organisation which manages the Armenian internet “.am” domain zone under agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and the Ministry of High-Tech Industry, defined in its Policy of Domain Names Registration that domain name registration is subject to annulment in cases where the name presents a cause for discrimination on account of sex, race, colour, etc. or promotes violence or war propaganda, etc. Hence this regulation is applicable to all internet users under “.am”, therefore, it has an application as wide as regular statutory norms.⁹⁹

Many media outlets and individual journalists report about verbal and online threats and attacks or being targeted by negative campaigns and digital security threats. This content sometimes also includes hate speech towards reporters. According to the Office of Human Rights Defender in Armenia, intolerance towards political opponents in the media and hate speech in political discourse in social media are observed very often. The Human Rights Defender expressed serious concerns in 2020 about growing trends of hate speech, stating that “(T)his vicious phenomenon has reached unacceptable proportions on social media. Particularly serious is aggression that is spread by fake users and groups.”¹⁰⁰ Moreover, the press, television and social media were flooded with hate speech, explicit disinformation and manipulations, especially in the post-war period [following the war with Azerbaijan], a repeated concern reported by the Committee to Protect Freedom of Expression¹⁰¹.

⁹⁹ Ibid.

¹⁰⁰ See the annual report of the Office of Human Rights Defender in Armenia presented to the Parliament in 2020, available at: <https://www.azatutyun.am/a/30606296.html>.

¹⁰¹ 2020 annual report by the Committee to Protect Freedom of Expression, p. 8, <https://khosq.am/en/reports/annual-report-of-cpfe-on-situation-with-freedom-of-expression-and-violations-of-rights-of-journalists-and-media-in-armenia-2020/>

In November 2020, the Commission for Television and Radio called on TV companies not to violate the rules of ethics and to fulfil the obligations undertaken. “Exclude the spread of hate speech, threats, and rumours on air, refrain from gossip. Not to be led by often fair sentiments, not to give airtime to people who make provocative calls. Contribute to the establishment of social solidarity by means of news programmes and interviews, exclude calls for violence against government institutions, political forces and figures, various civic groups, and ordinary people, differing in their opinions.”¹⁰² The Commission fined one TV and one radio station which broadcast violence and severe insult in 2020.¹⁰³ Furthermore, the Council of Europe experts have highlighted “the need to enhance ethical standards of reporting among the leading media outlets, especially broadcasters that to great extent define the overall tone of public debates and political rhetoric”.¹⁰⁴

6. Disinformation

The recent proliferation of manipulated and false narratives, including disinformation and misinformation, has been undermining democratic discourse in Armenia and generated distrust in the Government and in institutions with detrimental impact on social cohesion and political development. The unprecedented challenges of the year 2020, the Covid-19 pandemic and Nagorno-Karabakh war have exacerbated such trends. Various forms of false and manipulated information, including disinformation, were observed on virtually all communication platforms, including television and social media. Propaganda, misinformation, and inconsistent communication by the government were the main roots of manipulation, and “heavily contributed to the vulnerability of Armenia’s information space, creating informational vacuums, confusion, and societal divisions that were easily exploited by disinformation agents.”¹⁰⁵ Researchers have also identified very clear schemes of disseminating disinformation in an organised manner.¹⁰⁶

To date, no concept paper, comprehensive strategy or action plan has been developed and approved by the authorities to combat dis/misinformation in a more systematic approach. The fight against dis/misinformation can be described as a set of sectoral, momentary and restrictive measures with short-term impact. On the other hand, state bodies do not come up with timely and comprehensible comments on issues of public interest, resulting in an

102 RA National Commission of TV and Radio, <http://tvradio.am/2020/11/16/%d5%af%d5%b8%d5%b9-%d5%b0%d5%a5%d5%bc%d5%a1%d6%80%d5%b1%d5%a1%d5%af%d5%b8%d5%b2%d5%b6%d5%a5%d6%80%d5%ab%d5%b6/>.

103 Annual Report 2020, National Commission of TV and Radio, p. 31, http://tvradio.am/wp-content/uploads/2021/04/2020_.pdf?fbclid=IwAR3y_7QddFWzxF5arvc_Xh0YCYjSoJW9memx1nVZlqroCN4oDC Hd6teQEY

104 See the ‘Armenian Media Sector Needs Assessment Report - Overview of National Legislative Framework Covering Media Freedom, Freedom of Expression, Public Service Media and its compliance with the Council of Europe standards; Report by Dr Joan Barata, Bjorn Erichsen, Dr Krisztina Rozgonyi, and David Sandukhchyan’; (Jan 2020), p. 16.

105 Ibid., p. 8.

106 See the report on ‘The Patterns of Disseminating Disinformation in the Armenian Online Media. A sociological research’ by the Media Initiatives Center, Yerevan; 2021. Available at: https://mediainitiatives.am/wp-content/uploads/2021/03/Disinformation_Research_Report_EN.pdf.

important than “protecting the government from fake news,”¹¹¹ in April 2019, he ordered the NSS to crack down on media outlets and social media users who allegedly manipulated public opinion, which was perceived to be a matter of national security.¹¹² Over the last three years, several cases have been reported where the NSS arrested Facebook account users alleging them of inciting violence; spreading hate speech; or threatening national security.¹¹³ It remains unclear how the NSS assesses the threat or crime in these cases, as such widespread calls to expose and punish “fake news” may violate the right to freedom of expression.

In the fight against dis/misinformation, the main agenda of the Armenian civil society and media includes strengthening independent media outlets, achieving transparency in media ownership and funding, promoting self-regulation mechanisms of media, developing fact-checking initiatives and teaching media literacy. Meanwhile, there definitely is a need to enhance ethical standards of reporting among the leading media outlets, especially broadcasters that to a great extent define the overall tone of public debates and political rhetoric.

The Armenian legal and mediated context highlighted the complexities and the vulnerabilities of the mass media and of the press. The consequences of disinformation and hate speech in the digital sphere need mitigation by careful public policy measures which safeguard at the same time the freedom of expression and of the press and adhere to the adequate standards.

7. Media and Information Literacy (MIL)

According to media experts and civil society activists, some positive changes in the area of dis/misinformation have been achieved due to media literacy education campaigns. However, the potential harm that “fake news” may cause in society is still quite high. While public officials think that mitigation of “fake news” impact on public discourse must be done using legal and administrative tools, civil society activists are quite certain that legal instruments may produce negative side effects and are less effective compared to the improvement of media literacy and self-regulation.

“The Government should refrain from heavy-handed interference on the subject of disinformation and fake news, as well as from adopting legal acts that impose strict limitations, which may lead to a disproportionate restriction of freedom of expression”, says another research done by the local NGO Freedom of Information Centre (FOICA) in 2019.¹¹⁴ Instead, according to the experts, there is a need to expand and support the Government’s

111 "Pashinyan considers freedom of speech more important than protecting the government from fake news", Armenpress, January 31, 2019, <https://armenpress.am/arm/news/962640.html>

112 N. Nalbandyan, R. Stepanyan, "Prime Minister. Those who manipulate the Internet should be counteracted very hard ", Azatutyun, April 4, 2019, <https://www.azatutyun.am/a/29861696.html>

113 L. Sargsyan, “Fighting Fake News or Censoring Speech Online,” EVN Report, January 20, 2020, <https://www.evnreport.com/raw-unfiltered/fighting-fake-news-or-censoring-speech-online>

114 Freedom of Information and Government-Media Communication in the Republic of Armenia, 2019, available at <http://www.foi.am/en/articles/item/1772/> .

media literacy efforts and programmes; to carry out comprehensive media literacy programmes targeting all societal groups.¹¹⁵

The latest research suggests a passive approach by Armenian audiences towards dis/misinformation, and even in case of wrong, false, misleading or unethical information published by the Armenian media, most often respondents would prefer the passive action “to do nothing”, and “almost half of the respondents never check the links (44%) and 23% of the respondents claimed they never click on links that take them to news websites.”¹¹⁶

In the past two years, there has been a significant increase in programmes on media literacy and fact-checking in the media, turning the fight against dis/misinformation into a unique self-organisation process. Professional NGOs and media are launching various programmes and platforms, with the aim to tackle disinformation and minimise the risks it might cause.¹¹⁷

Journalistic organisations also closely collaborate with state institutions. As reported FOICA in cooperation with the RA Government, is developing a comprehensive strategy and action plan for the fight against disinformation in Armenia to be ready by May 2022. The Media Initiative Centre closely cooperates with the Ministry of Education towards the integration of media literacy into the RA general education standards which is of key importance and could lead to increasing the public resistance to dis/misinformation flows from an early age.¹¹⁸

To date, the public authorities have lacked a strategic approach in the struggle against disinformation, and their efforts were directed to restrictions and sanctions. This approach is contrary to international best practices and Council of Europe standards, which emphasise the need for soft-regulatory responses and the strengthening of media and information literacy (MIL) efforts. The positive responses were mainly initiated by CSOs who were at the forefront of digital rights education and MIL.

115 Ibid.

116 See the ‘MEDIA CONSUMPTION IN ARMENIA December, 2021’ Survey findings by the Media Initiatives Center and the Caucasus Research Resource Center-Armenia, available <https://mediainitiatives.am/wp-content/uploads/2022/01/Media-Consumption-in-Armenia-Report.pdf>

117 For example, the Freedom of Information Center has implemented both long-term and short-term projects with the aim of improving the situation in the educational institutions; fact-checking academic laboratories have been set up in a number of Armenian universities and schools, “Fakehunting” web programs# have been launched, and thematic journalistic publications were posted. The Public Journalism Club has implemented a number of projects, including “Creation of a fact-checking network”, development and operation of “Fact Radar” platform#, as well as launching “Infodemia” multi-episode program. In January 2022 the CivilNet launched its new fact checking program CivilNetCheck. The main goal of it is to fight against fake news, expose misinformation and manipulations, and inform the public about it. Civilnet also has new and unique format, called “Fake of the Week”, which is an attempt to combat the spread of dis/misinformation. The “Media Literacy” program on Armenian Public TV is aimed at expanding the general knowledge of the Internet and media literacy. Factor TV has launched its own fight against dis/misinformation flows since June 2021. “Verified” section of “Media.am” professional platform, was launched by the Media Initiatives Center.

118 Media Literacy, MIC, https://mediainitiatives.am/en/medialiteracy/?fbclid=IwAR137bH6OS6Z4ZUdvaL414SBzhLSISJTFfNyeGRpWEWi9bVV_yjeb9RptkHo.

8. The institutional framework of media regulation and governance

8.1. The National Commission of TV and Radio of Armenia

The status and independence of the National Commission of TV and Radio of Armenia (hereinafter: the NRA) is specifically addressed under the Armenian Constitution. Chapter 12 (Articles 196 and 197) of the Constitution defines the scope of authority of the NRA, as well as its composition and members' appointment rules. Furthermore, the Law on Audiovisual Media stipulates the specific rules on the status and the powers of the NRA, whereby Articles 34 and 35 of the law establish the procedure for the nomination and election of the members of the Commission. While the NRA was provided with *de iure* independence by the new Law on Audiovisual Media, it was recommended that the law should also incorporate "additional provisions regarding the participation of civil society, journalists' and similar organisations at some point in the nomination and/or appointment process."¹¹⁹ It is also to be noted that gender equality is not provided for on the Board of the National Commission of TV and Radio, despite corresponding legal requirements.

The 2019 Assessment Report put forward several recommendations about the need for further strengthening the independence of the NRA. Independent regulators are the key pillars of good media regulation and governance. National media regulatory authorities are essential institutional safeguards of media freedom and pluralism according to the Council of Europe standards and European policy traditions. Media regulators traditionally played a precarious role in ensuring freedom of expression and safeguarding pluralism. They were placed in the position to consider the impact of technological and societal changes and implement regulations that were to keep pace with rapidity and complexity as well. Laws and legislation were no longer able to cope with these requirements; therefore, rule-setting by regulators became a major factor in governing media.

According to the Council of Europe standards and best practices,¹²⁰ safeguarding the independence of the regulators should consider the following criteria:

- Status and powers;
- Financial autonomy;
- The autonomy of decision-makers;
- Knowledge;
- Transparency and accountability mechanisms.

This implies that good media governance requires an independent regulatory body being established on a statutory basis with powers and duties set out explicitly in law, and that its independence should be adequately and expressly protected from interference, particularly of a political or economic nature."¹²¹

119 OSCE Expert Report, p. 4.

120 INDIREG. (2011). INDIREG - Indicators for independence and efficient functioning of Audiovisual media services regulatory bodies - A 2011 study conducted on behalf of the European Commission.

121 2019 Assessment Report, pp. 36-37.

These recommendations still hold, and the need for reinforcing the de facto independence of the NRA is an imperative to good media governance in Armenia. Therefore, it is necessary to provide for further legislative guarantees of the NRA to “count on sufficient funds in order to perform activities in an efficient, proper and independent manner.”¹²² Moreover, the NRA will need support in various forms to further professionalisation and adherence to the regulatory challenges all regulators in the Council of Europe member States similarly face with regards to platform-regulation and other emerging trends. Furthermore, there is a clear need to advance gender-sensitive regulatory approaches by the NRA. According to Council of Europe standards, NRAs should get involved in monitoring media content with regards to gender equality (on-screen and off-screen), develop and enforce guidelines on gender-sensitive reporting in the media and engage with similar activities. The National Commission of TV and Radio would benefit from Council of Europe support also in this regard.

8.2 Public Broadcasting: role, status and governance

The establishment of an independent public service broadcasting system - television and radio currently - offering diverse cultural, educational, informative and entertainment programming is guaranteed under Article 42 of the Constitution. Also, the Law on Audiovisual Media stipulates the main provisions of the Public Broadcasters (hereinafter: PSBs), who are foreseen to guarantee “the principles of objectivity, democracy, impartiality, diversity, pluralism, as well as shall ensure freedom of expression, conscience, thought, belief and creation” (Article 22 para 5). The same law also provides for the governance by the Council of the PSB which body is to ensure the regulation of and exercising control over the PSBs (Article 23 para 1).

The 2019 Assessment Report highlighted several issues with regards to the accountability of the governance system as well as the independence of the PSBs, the findings of which still hold. The *independence of the Council of Public Television and Radio Company* was considered a critical area. Although the underlying law has been changed since then, the current legal guarantees do not suffice, either. As the legal analysis of the Law on Audiovisual Media has critically pointed out “the requirements to become a member of the Council are very broad and do not guarantee the level of expertise that is necessary in order to undertake this leadership position. The basis of the criteria and mechanisms on which candidates are selected and finally appointed need to be clearly defined and set up by law.”¹²³

The *financial stability is a matter of independence* of the PSBs. The 2019 Assessment Report recommended “a four- or five-year budget, with an indexation for inflation, [which] has major advantages. [...] it creates long-term security and makes it possible for the broadcaster to develop a long-term staff and investment budget.”¹²⁴ Although the new Law on Audiovisual Media put forward some guarantees on financial stability, which was welcomed by the current Executive Directors of the PSBs, there is still further need for additional legal guarantees. The OSCE Expert Report argued that “(E)stablishing by law the budget of a public service body on the mere basis of the previous year’s budget considered as a minimum

122 OSCE Expert Report, p. 4.

123 OSCE Expert Report, p. 4.

124 2019 Assessment Report, p. 38.

benchmark is insufficient and almost arbitrary in order to guarantee that public service media receives adequate and sufficient funds. Therefore, the law would need to introduce the provisions that would properly establish the financial costs of providing the public service and identify the different sources of income (advertising, sponsorships, etc.) in order to calculate the need for public funding.”¹²⁵

The experts agree with this analysis and recommend that the necessary amendment to the law be put in place, with the introduction of adequate provisions that would allow for budgeting on a long-term basis for the true needs of the PSBs - including digital investments -, and for identifying “the different sources of income (advertising, sponsorships, etc.) in order to calculate the need for public funding.”¹²⁶

Furthermore, the 2019 Assessment Report highlighted a number of other critical areas for improvement and put forward relevant recommendations. *Diversifying of the PSM output* was a crucial call made towards the Executive Directors of the PSBs and the Council. It was suggested to set up “internal expert groups to prepare a detailed analysis and proposals with the potential content and the needed budget for opening new TV (and radio) channels.”¹²⁷ *Taking Advantage of the Digitalisation* was another area of concern, and several proposals have been made, including “establishing a fast working digital play-out service where citizens can watch and listen to all the radio and TV programmes produced domestically, when and where they want is also very important. The consumption of this service should be measured, and the figures be combined with the traditional viewing figures.”¹²⁸ The 2022 Update Report comes to the conclusion that no major improvements were facilitated in any of the highlighted areas; thus, the previous recommendations are still valid and even more urgent than before. Therefore, the call for an “*Overall Public Service Broadcaster Strategy*” should be reiterated, aiming at a shared vision for the way forward, and including ambitions, targets and methods to achieve the set objectives.¹²⁹

The governance of the Armenian PSM system still lacks a critical set of guarantees for independent functioning and the meaningful realisation of its capacities. There is a growing level of loss in trust in the State and the public value information communicated by the public authorities, which has served for a fertile ground for dis- and misinformation to flourish. Thus, it is inevitable for the PSM to take full advantage of its unique and specific role in building a social cohesion in Armenia on democratic terms.

9. Needs Assessment

9.1 Legislative and Regulatory Needs

125 Ibid. p. 4.

126 Ibid., p. 16.

127 Ibid., p. 38.

128 Ibid., p. 39.

129 For further details see: Ibid., p. 41.

Based on the detailed analysis presented above it can be concluded that the current Armenian legal framework regulating the media sector is outdated and not appropriate to enhance freedom of expression standards. It is not aligned with European best practices, moreover not eligible to further amendments. The Comprehensive and Enhanced Partnership Agreement (CEPA) signed between the European Union and the Republic of Armenia explicitly foresees the approximation of audiovisual and media policies to reinforce independence and professionalism of the media “as well as links with media in the European Union in compliance with European standards, including those of the Council of Europe” (Article 99). The CEPA Roadmap on legal approximation to European standards (approved in September 2019) states that the national authorities should envisage measures for the “development and adoption of a legislative package amending legislation regulating the field of Mass media” with the aim of “increasing Transparency of Media funding sources by 2020”, rendering the Ministry of Justice of the Republic of Armenia be in charge for the implementation of such measures.¹³⁰

There are strong advocates for and a broad consensus among stakeholders on the need for significant reforms to create a functioning media market attracting investments and an overall legal and regulatory environment enabling sustainable and independent media. The call by these advocates for urgent policy and legislative interventions was articulated in an even more direct and clear manner than at the time of the 2019 Assessment.

Self-regulation in the sector is in place, but its impact is limited due to a lack of clear policy and legislative promotion thereof. Self-regulation needs support and strengthening to meet its potential impact on media governance. The fight against hate speech and dis-/misinformation was a critical area identified whereby co-regulatory arrangements would be highly necessary. The Council of Europe standards are widely and timely addressing this issue. This should be high on the policy agenda. The latest and most relevant Council of Europe instruments specifically emphasise that member States bear distinct obligations with regard to self-regulation, especially enabling appropriate funding of self- and co-regulation mechanisms and access to financial support schemes, in order to secure their independence and financial sustainability.¹³¹ Moreover, States are to create a generally favourable environment to and a high level of public awareness about the potential role of self-regulatory mechanisms such as ombudspersons and press/media councils equipped with stable, meaningful powers in enhancing the media’s commitment to verification and quality control in the digital age.¹³² The Ministry of Justice has expressed their need for the Council of Europe

130 The Comprehensive and Enhanced Partnership Agreement Between the Republic of Armenia and the European Union and the European Atomic Energy Community and Their Member States – Roadmap on the Implementation of the Provisions Being Applied Provisionally; Final draft approved by the Interagency Commission; September 2019; p. 5 (P. 11).

131 Declaration Decl(13/02/2019)2 by the Committee of Ministers on the financial sustainability of quality journalism in the digital age, https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d

132 See the Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age (MSI-JOQ(2018)08rev6) <https://rm.coe.int/msi-joq-2018-rev7-e-draft-recommendation-on-quality-journalism-finalis/168098ab76>

support in reforming the current status of the self-regulatory regime and establishing the legislative foundations for a meaningful co-regulatory one.

9.2 Media Sector Needs

There is insufficient, regular, independent monitoring and evaluation in place on media pluralism in the Armenian media sector. Thus, its assessment according to Council of Europe standards is not possible.¹³³ Moreover, the status of freedom and independence of the current structure of the media system is not assessable either, nor are the threats to that (e.g., oligopolistic or dominant position of certain media actors).

Media ownership is not transparent according to repeatedly announced concerns of major stakeholders.¹³⁴ Although ownership transparency rules have been developed, the implementation practice remains insufficient. Here, again, the Council of Europe standards clearly require that member States ensure that the public has access to specific information about the ownership, management and editorial structures of the media, as well as their financing, with effective regulatory reinforcement in place.¹³⁵ Furthermore, States are to provide support measures for media pluralism enabled by targeted statutory and regulatory interventions in order to reduce influence of political/commercial interests on media independence.¹³⁶

There is no meaningful and objective information or data available on the media sector's financial viability. Advertising market spending, State funding and other economic factors are not transparent nor assessable.

9.3 Media Regulation Needs

The Commission on Television and Radio plays a crucial role to ensure media freedom and pluralism in the Armenian media sector. There is an urgent need to strengthen the regulatory capacity of the Commission. Moreover, transparency of operations, independence and accountability of the Commission are critical matters to ensure good media governance. This implies that the statutory requirements with regards to ensuring the independence of the Commission should be aligned with the Council of Europe standards and should correspond to European best practices. Furthermore, gender equality should be provided for on the Board

133 "States are called upon to ensure that there is regular independent monitoring and evaluation of the state of media pluralism in their jurisdictions based on a set of objective and transparent criteria to identify risks to the variety in ownership of media sources and outlets; the diversity of media types; the diversity of viewpoints represented by political, ideological, cultural and social groups; and the diversity of interests and viewpoints relevant to local and regional communities. States should also ensure that bodies conducting independent monitoring and evaluation exercises have sufficient access to all relevant data and sufficient resources to carry out these tasks. States are further urged to develop and enforce appropriate regulatory and policy responses to effectively address any risks found." Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership

134. Ibid. 3. Draft CEPA Roadmap on legal approximation to European standards prepared by CSOs, p. 18.

135 Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content

136 Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership

of the National Commission of TV and Radio and regulatory approaches to ensure gender equality by the media need to be explored and implemented according to Council of Europe standards and best practices.

9.4 Public Service Media Needs

Public Service Media (PSM) in Armenia is facing a number of major challenges. In order to address them, major changes are required aiming at the PSM fulfilling its democratic role providing the citizens with trustworthy, reliable and diverse information, also meeting the standards of the digital age. The strengthening of the PSM system is crucial in countering the negative effects of dis- and misinformation as well. With regards to *journalistic education and training*, the representatives of the PSBs emphasised their needs for capacity building in digital content production and dissemination in order to enhance outreach and efficiency. These skills should be strengthened in line with Council of Europe standards and the principles of media pluralism.

Providing for the financial stability of the PSM is a crucial element in this process. The Law on Audiovisual Media has to be revised and adequate provisions that would allow for budgeting on a long-term basis for the true needs of the PSBs should be put in place. The Council of Europe Recommendation CM/Rec (2012) of the Committee of Ministers to member states on public service governance and the Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age (13/02/2019) both strongly recommend to secure long-term financial stability and full political independence of public service media. The Council of Public TV and Radio Company of Armenia must refer to the Council of Europe recommendations when negotiating the new law with the government and parliament.

10. Recommendations

10.1 General

The 2022 Assessment reiterates the majority of the recommendations of the 2019 Report¹³⁷ and concludes with an additional set of necessary and inevitable steps to be taken in order to support the media sector in Armenia in fulfilling its democratic mission in the society. These actions should include as a minimum

- the rebuilding of a cooperative and inclusive framework and consultative process between the state, civil society and the media sector;
- the development of a comprehensive media reform strategy and a detailed media policy outline based on scenario analyses;
- the urgent decriminalisation of speech acts relevant to media reporting and the withdrawal of criminal liability for grave insults;
- the further promotion of self-regulation and the implementation of co-regulatory mechanisms;

137 This report provides overall recommendations based on baseline situations as of March 2022, and does not cover any legislative or institutional development that may have taken place in the Republic of Armenia beyond 15 March 2022.

- the advancement of media ownership transparency and the consequent enforcement thereof;
- the establishment of an extrajudicial review mechanism for access to information violations;
- systemic and strategic responses in countering newly emerging digital security risks, including those threatening the safety of journalists in digital environment; and
- safeguarding journalistic work in the media and ending impunity to those committing crimes against journalists.

10.2 Legal framework

Based on the needs assessment and analysis of the existing legislative framework carried out by the authors of this Report, it is recommended that national authorities carry out a major legal reform process with setting up a dedicated Working Group (WG) including representatives of all stakeholders.

The complex legal reform should enable a level playing field for all media service providers, a fair balance of rights and obligations of linear and of nonlinear providers and an overall democratic legislative context. The 2nd stage of the legal reform process should foresee the setting up a dedicated Working Group (WG) including representatives of all stakeholders – the Prime Minister’s Office, the Ministry of Justice, other ministries and agencies with a relevant corresponding portfolio, the National Commission on Television and Radio, the Council of the Public Television and Radio Company of Armenia, the Public Television and the Public Radio Companies of Armenia, private broadcasters’ associations, civil society organisations and supported by the Council of Europe international experts as well as by local legal experts.

The agenda of the Legal Reform Process is to address particularly:

- Ensuring the legislative requirements to the functioning of a free, independent and sustainable media sector in Armenia;
- Creating an enabling and future-proof legal framework;
- Revisiting criminalisation of speech acts, such as insult in light of international FoE standards;
- Levelling the playing field in the media sector;
- Supporting high-quality journalism and guaranteeing the safety of journalists;
- Enhancing media literacy;
- Tackling urgent needs on the fight against hate speech and countering dis-/misinformation;
- Safeguarding good media governance with particular attention to strengthening the regulatory capacities of the National Commission on Television and Radio in terms of Status and Powers, the Financial autonomy and the Transparency and Accountability of the Commission;
- Warranting media ownership transparency and efficient enforcement with special regards to CoE instruments;

- Ensuring independence of the public service broadcaster and supporting its efforts to ensure trustful and meaningful public service media output, and enabling the full enjoyment of digitalisation;
- Promoting self- and co-regulation in the media sector by statutory support and by enabling access to sustainable financial schemes and the strengthening of the capacity of already established self-regulatory schemes in place in Armenia.

10.3 Public Service Media

With regard to ensuring compliance with the Council of Europe standards and European best practices the following recommendations are provided with regard to governance of the public service broadcaster:

- In order to secure long-term financial stability and full political independence of public service broadcaster it is important to have a system of a long-term, four- or five-year budget, with an indexation for inflation;
- The Council, the TV and the Radio management should explore a further in-depth cooperation and merger possibilities, make a thorough analysis of the advantages and disadvantages concerning the broadcast output, the management and the running costs, in order to benefit from digitalisation;
- The precise needs for staff trainings should be analysed and described in a specific training needs assessment and various international donor organisations must be approached to seek assistance;
- The Council of Public TV and Radio Company should carry out regular studies focusing on the trustworthiness of the News gathering by Public TV and Radio to ensure that Public Service Broadcasting is ranking as number one in public opinion surveys on trustworthiness of their news;
- The Public TV and Radio Company should have an internal Code of Ethics and an Ombudsman or an editorial board to self-regulate its output.

Annex I Biographical Note on the Authors

Ms Shushan Doydoyan is a founder and director of the Freedom of Information Centre ([FOICA](#)). She has promoted the adoption of Freedom of Information legislation and controls in Armenia. Her work promoting government transparency includes undertaking and coordinating strategic litigation, managing public education campaigns and training civil servants, CSOs and media representatives in FOI law. She was the first head of the Armenian Personal Data Protection Agency. For many years Ms. Doydoyan has provided expert services, in depth analysis and trainings in the sphere of freedom of information and expression, open government partnership, personal data protection with the support of OSCE, Council of Europe, USAID, UNDP, British Embassy, MSI, IRI and GIZ. Ms. Doydoyan has had a PhD degree since 2001. She has a law and journalism background. As a journalist, she serves as country representative of Reporters Without Borders since 2003. She has a doctor's degree in Journalism and master's degree in law. Ms. Doydoyan received the Freedom Defender award in June 2015 at the [Universal Rights Awards Ceremony](#) in recognition of her outstanding efforts pursuing freedom of information, transparency and accountability in public decision-making.

Dr Krisztina Rozgonyi is Senior Scientist at the [Institute for Comparative Media and Communication Studies \(CMC\)](#) of the Austrian Academy of Sciences (ÖAW) and a senior international media, telecommunication and IP [legal and policy expert](#). She works with international and European organizations (such as the ITU/UN, UNESCO, Council of Europe, European Commission, World Bank InfoDev, OSCE and BBC MA), with national governments, regulators as adviser on media freedom, spectrum policy and digital platform governance. Between 2004-2010 she served as the Chairperson (Deputy Chairperson) of the Telecoms Authority in Hungary. Her expertise lies in media and telecommunications policy-making and regulation with extensive experience in legal reform work. Dr Rozgonyi is also involved with managing a [platform](#) at the Department of Communication of the University of Vienna to bridge research with policy agendas.

Annex II Documents consulted

Council of Europe

Standards

[Council of Europe Convention on Access to Official Documents \(CETS No. 205\), Tromsø Convention](#)

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