



**ГАРМОНИЗАЦИЯ ЗАКОНОДАТЕЛЬСТВ
СТРАН ЮЖНОГО КАВКАЗА
В ОБЛАСТИ СМИ
С ЕВРОПЕЙСКИМИ СТАНДАРТАМИ**

**HARMONIZATION
OF MEDIA LEGISLATION
OF SOUTH CAUCASUS COUNTRIES
WITH EUROPEAN STANDARDS**



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- *Законодательство в области СМИ и свободы слова*
- *Права журналистов и медиа*
- *Сравнительный анализ ситуации*
- *Рекомендации*



**HARMONIZATION OF MEDIA LEGISLATION
OF SOUTH CAUCASUS COUNTRIES
WITH EUROPEAN STANDARDS**

- *Legislation on media and freedom of expression*
- *Rights of journalists and media*
- *Comparative analysis of the situation*
- *Recommendations*

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Проект осуществлен Бакинским пресс-клубом, Комитетом по защите свободы слова (Армения) и Ассоциацией молодых юристов Грузии при поддержке Программы по сотрудничеству на Южном Кавказе Фонда "Евразия" за счет средств, предоставленных Агентством США по международному развитию (USAID) и Фондом предотвращения глобальных конфликтов правительства Великобритании.

По взаимной договоренности, каждый из партнеров несет ответственность за ту часть работы, которая была возложена на него согласно разделению функций.

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By a trilateral agreement, each of the partners bears responsibility for the part of work, assumed by the distribution of functions.

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PREFACE

Perfection of legislation in the media sphere, bringing the legal and normative base of media activity in compliance with the commonly accepted international standards is one of the most essential tasks for Armenia, Azerbaijan and Georgia. All the three states of the South Caucasus, having joined the Council of Europe, assumed a number of commitments, also related to the legal regulation of information sphere.

This book was published under a regional project "Harmonization of Media-Related legislation of the South Caucasus countries with European Standards". The project was implemented by the Committee to Protect Freedom of Expression (Armenia), Baku Press Club and the Association of Young Lawyers of Georgia with the support of South Caucasus Synergy Program of Eurasia Foundation.

The book represents reports on the media legislation in force in Armenia, Azerbaijan and Georgia; comparative analysis of legal regulation of media activities in the three countries; recommendations on how to make the media-related legislation compliant with European standards; reports on violating rights of journalists and media in Armenia, Azerbaijan and Georgia during the periods of 2001-2003, as well as a comparative analysis of the situation on law violations in the three countries.

As the research showed, the problems of the information sphere in Armenia, Azerbaijan and Georgia are quite similar. This pre-conditioned the need for interaction of non-governmental organizations of three countries, exchange of experience on the development and lobbying public initiatives aimed at modernization of legal regulation of media activities, introducing European norms in the media legislation.

We hope that the book will be of interest not only to journalist and lawyers but also to a broader audience. The project authors hope that the materials published here will attract the attention of state structures and public associations of South Caucasus, as well as representatives of international organizations to the problems of freedom of expression, the creation of favorable conditions for the establishment and development of independent media in Armenia, Azerbaijan and Georgia.

LEGISLATIONS OF THE COUNTRIES OF SOUTH CAUCASUS ON MEDIA AND FREEDOM OF EXPRESSION

The reports presented below contain analysis of the media and freedom of expression laws of Armenia, Azerbaijan and Georgia in force as of March 31, 2004, their pre-history, as well as certain draft laws related to information sphere.

Hence, the subject of the study (although in different order considering the specific conditions of each country) became:

- constitutional provisions,
- freedom of expression,
- general media legislation,
- legal regulation of broadcast sphere,
- criminal defamation and insult,
- regulation of the media activities during elections,
- adjacent legislation.

ARMENIA

1. Constitutional Provisions

The Constitution of the Republic of Armenia was passed in 1995. Its Article 24 stipulates freedom of expression: "Every person has a right to insist on his/her opinion. It is prohibited to induce a person to give up or change the opinion held.

Each person has a right to freedom of expression, including the freedom of search, receipt and dissemination of information and ideas via all media, regardless of the state boundaries". At the same time Articles 44 and 45 of the Constitution also provide for the restriction of freedom of expression: "... only by law, if it is necessary to protect the state and public security, the health and morals of the society, the rights and liberties, honor and reputation of other people" (Article 44), as well as "...under martial law or in the cases provided for by Clause 14 of Article 55 of the Constitution" (Article 45). And in accordance with Clause 14 of Article 55 the President of the country " in case of an immediate danger to the constitutional regime,

having consulted the Chairman of the National Assembly and the Prime Minister, implements the measures as prompted by the situation and issues an address to the people".

Since Armenia ratified the Universal Declaration of Human Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms, these two documents became a part of the national legislation. Therefore, with regard to freedom of expression Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention apply, too.

2. Free access to information

Until recently Armenia had no law on freedom of information or on access to it. The RA Law "On Freedom of Information" was passed on September 26, 2003 and came into force on November 14, having been signed by the President of the country.

Prehistory. Before the adoption of the RA Law "On Freedom of Information" the problem was in fact regulated by Article 24 of the RA Constitution. The provision on access to information (but only for journalists and media) was also present in the Law of 1991 "On Press and Other Media Outlets", Article 4 of which stipulated (the laws herein are quoted in their unofficial translation): "The press and other media outlets have a right to receive information from any state bodies, public, political organizations, their heads..."

As to the real situation, the picture is as follows. Starting from 1990, the sessions of the Parliament (first, the Supreme Council, later the National Assembly) were open, moreover, until 1995 they were broadcast on the state television and radio, and after that — only on the state (public) radio. According to the RA Law "Statutes of the RA NA", the sessions, devoted to the statements by the deputies and the deputies' questions to the Government and the answers, are recorded and aired on the public television. In fact, the information of the National Assembly is open. The accredited journalists (and not only they) have access to draft laws and other working documents. Currently, the National Assembly also has a regularly updated web site, where not only the legislation in force is presented, but also the drafts under consideration and the agendas of the coming sessions. Upon the end of the three-day session briefings of parliament fac-

tions and groups are held, when the deputies present their viewpoints with regard to the questions discussed as well as various political, economic, social and other aspects of the life of the country.

The sessions of the Government are closed. However, after the sessions information on the issues considered is released to the journalists. The ministers who reported at the session speak at a briefing and tell the details to the accredited media representatives.

The court sessions are also open in Armenia.

In general there is actually no legal ban on information receipt, with the exception for the data constituting state, official or other special (commercial, bank) secret. There have been no litigations in Armenia on the disclosure of state or other secret.

However, it should be stressed that the situation of the information access is far from being as ideal as the narration above may hint. The issue primarily lies in the practical component of the matter in the bodies of state administration (in particular in the power bodies — the police, the ministry of defense, the national security service, the prosecutor's office). The press and public relations structures in some cases behave as structures aimed more at impeding than facilitating the receipt of information.

In as far back as in 1990s it became apparent that the need for law on freedom of information had matured to regulate the sphere. In 1999 Yerevan Press Club jointly with a number of other non-governmental organizations started the development of an appropriate draft law. In future, this very document became the basis of the draft, presented by two NA deputies as a legislative initiative to the consideration of the Parliament. Being discussed since 2002, the document underwent numerous changes, was assessed by the experts of "Article 19" international organization and was finally adopted and qualified as a normative act compliant with the international standards. It should be stressed here that this was practically the first precedent of constructive cooperation of the specialized standing committee of the Parliament, the authors of the legislative initiative and non-governmental organizations during the law development.

The RA Law "On Freedom of Information" comprises 15 articles that deal with: the main FOI principles; the registration, classification and the information storage; access to information and the ensurance of its transparency; the restrictions to the freedom of information; the conditions for providing information, the procedure for submitting a request for information and its consideration; the grounds for a refusal to provide information; responsibility for the violation of freedom of information, etc.

What are the main advantages of the law? It is the first in the post-Soviet Armenia to guarantee the constitutional right of the citizens to seek and receive information, according to the principles that comply with international standards, including Article 10 of the European Convention of Human Rights. Besides, a clear definition is given for: structures that in the context of this law are information holders and that have specific duties, namely: "...state and local administration bodies, state institutions, organization funded by budget subsidies as well as organizations of public importance and their officials that possess information" (Art. 3). Notably, the notion of "organizations of public importance" was for the first time introduced into Armenian legislation, being defined in the same article as "non-governmental organizations that are monopolistic or dominating in the commodity market, as well as providing services to the public in the spheres of health care, sport, education culture, social security, transportation, communications and utilities". In the opinion of experts, this definition is rather specific and includes the actors that must ensure access to the information of public interest that they possess.

Let Article 7, one of the most important ones in our opinion, be considered. It is titled "Ensuring the accessibility and openness of information". The Article, first of all, stipulates: "The information holder develops and publishes the procedure for providing information which is posted in a conspicuous place". The second clause of the Article obliges the information holder to immediately publish it or otherwise notify the public about the information at the disposal, the disclosure of which can prevent the danger for the state or public severity, public order, public health and morals, rights and liberties of other people, environment, property of citizens.

Item 3 of this Article, where the types of information or the changes in it that the information holders are to publish at least once a year, is nonetheless important. These are:

- "1) the work and service, implemented (or to be implemented) for the public;
- 2) budget;
- 3) the forms of written queries and the instructions recommended for filling them in;
- 4) the lists of staff members, as well as the names, education backgrounds, positions, office telephone numbers, e-mail addresses of officials;
- 5) the procedure for employment and filling in the vacancies;
- 6) the impact on the environment;
- 7) the programs of public events;
- 8) the procedure for public visits, the day, the hour and the place;
- 9) the procedure for pricing in the sphere of labor and services, the tariff definition;
- 10) the list of the information held and the procedure for using it;
- 11) the statistical and brief data on the queries received, also about the grounds of the refusal;
- 12) sources for processing or obtaining the information as defined in this part;
- 13) the contacts of a person, authorized to give explanations on the information as defined in this part".

The next items in the Article show that the changes introduced in these types of information must be published within 10 days and are disseminated in a form, accessible by the public, and should the information holder have a web site, the renewed information must be placed on it as well.

It is also of principal significance that the procedure of submitting and considering the enquiry for information is stipulated by the law (Art. 9) and was not left for the subsequent determination by specific bodies or the Government. This Article also contains an important provision eliminating one of the obstacles that used to exist. It is expressed as follows: "The requesting party does not have to justify the information enquiry" (Cl. 4, Article 9), thus reflecting the Recommendation R (2002)2 of the Ministers Committee of the Council of Europe "On Access to Official Documents". Section 5 of the Recommendation stipulates: "the individual requesting an official documents must not be obliged to name the reason why access to the document is wanted".

According to part 7 of Article 9 of the Law in question, the response to the written enquiry must be provided within 5 days. Should additional work be necessary to provide the information, according to the law the information is provided within 30 days. But the inquirer should be notified about it within 5 days, with a specification of the reasons for the delay and the final date when the information will be provided. And if there is only a part of information wanted, it should be provided and, if possible, the response should mention where the remaining info can be found.

As to the terms for providing information, according to the law, no fees are charged for answering an oral enquiry, for provision of printed or photocopies information of up to 10 pages, for e-mailing the information, etc. It is also stipulated that in the cases when fees are charged they cannot exceed the amount of the expenses to be incurred for the provision of information.

Let the restrictions on the freedom of information contained in the Law be considered. Article 8 has this very title - "Restrictions on the Freedom of Information". It is quoted in full, since, in our opinion, it is quite interesting and complies with international standards, including the provisions of Recommendation R (2002)2 of the CE Committee of Ministers.

"1. The information holder, with the exception of the cases, provided for by part 3 of this Article, refuses the provision of information, if it:

- 1) contains state, official, bank, commercial secret;
- 2) violates the secret of private and family life of a person, including the privacy of correspondence, telephone conversations, postal, telegraph and other messages;
- 3) contains the data of preliminary investigation, not subject for disclosure;
- 4) discloses information that calls to restrict the access due to the professional activity (medical, solicitor or attorney secret);
- 5) violates the copyright and/or adjacent rights.

2. If a part of the information demanded contains data the provision of which is to be refused, the rest of information is presented to the inquirer.

3. The provision of information may not be refused, if:

- 1) It is related to emergencies that endanger the safety and health of

citizens, as well as to calamities (including those officially predicted) and their subsequences;

2) It represents the overall economic situation of the Republic of Armenia, as well as the actual situation in the spheres of environment and nature protection, health care, education, agriculture, trade, culture;

3) Failure to provide this information will have a negative impact on the implementation of the state programs for the social, economic, scientific, technical and cultural development of Republic of Armenia".

Despite the fact that the Law "On Freedom of Information" is quite progressive, it, however, has certain deficiencies. Among them is the unjustified restriction, narrowing of the scope of oral enquiries. Thus, the answer for the enquiry can only be given if it refers to the information the provision of which "can prevent the danger to the state and public security, public order, health and morals, the rights and liberties of others, the environment, property of people" (Article 9). It is further stipulated that by means of an oral enquiry with the information holder the presence of the information of interest can be determined or a clarification about the procedure for consideration of written inquiries. To this the information types to be gained by oral enquiry is restricted. However, in the journalistic practice it is often necessary to clarify facts, figures and other data. And it turns out in such cases one must make a written enquiry and wait for an answer for five days. This may impede the timely work of the media representatives.

The stipulation for a five day term for a response to written enquiries, in our opinion, is not always justified, either. Thus, Item 2 of Part 7 of Article 9 of the Law stipulates: "If the information mentioned in the written enquiry had been published, the data on the vehicle, the place and the date of publication are provided to the enquirer within five days after the receipt of the enquiry". Can it be that the information owner needs these five days to clarify "the vehicle, the place and the date"? We believe that the deadline for providing data on the information published could have been shorter and confined to one day at most.

The deficiency of the Law apparently is that despite the numerous discussions the provision on the defender of the right to freedom of information (an independent official, ombudsman, or a body to trace the situation in this sphere and if necessary take appropriate measures). In different countries this body has different names, but its main function is in controlling the implementation of the commitments of the state bodies as stipulated by the Law on Freedom of Information, make conclusions and report on the situation in the sphere. In the absence of such a structure the Law in question says: "The refusal in providing information may be challenged in a competent administrative body or in court". The Law however does not make it clear which administrative body is to be considered competent — to say nothing of the fact that such a body can hardly be independent. And the court litigations always take too much time.

The Law, as noted above, came into force quite recently, and during its implementation, most probably, other shortcomings will also be revealed that will call for introductions of amendments and additions.

3. The RA Law "On Mass Communication"

The first RA Law "On Press and Other Media Outlets" was passed on October 8, 1991. It, with insignificant changes had been in force till February 2004. Subsequently to lengthy debates that lasted for almost two years, the National Assembly of Armenia passed the new RA Law "On Mass Communication" on December 13, 2003, ratified by the President on January 14, 2004 and in force since February 9 the same year.

The initial version of the draft developed by the RA Ministry of Justice and under discussion since January 2002 was much more regressive than the Law "On Press and Other Media Outlets" still in force at the moment. The document caused strong protests from the journalistic associations and the media who turned it down, justly stating that the adoption of this draft could lead to censorship and freedom of expression elimination in Armenia.

The draft was twice included into the agenda of the Parliament sessions during the previous summon, but the voting on it was failed. The Government revised the documents several times; however it still

retained clauses that were unacceptable for the journalistic community. After the parliamentary elections in 2003 the situation somewhat changed: both the authors of the draft and the specialized Parliament commission expressed a wish to hear and consider all the propositions aimed at the improvement of the documents and its bringing into compliance with international standards. Under the circumstances Yerevan Press Club and the Committee to Protect Freedom of Expression developed the Concept on the Legal Regulation of Media, where the general notion of the media legislation that would correspond to the commonly accepted European norms is presented. It was decided that all the discussion around the draft "On Mass Communication" will be conducted proceeding from the principles at the basis of this concept.

In September 2003 the Standing Commission on Science, Education, Culture and Youth issues held hearings on the draft law with the participation of all the parties in question. At these hearings the Committee to Protect Freedom of Expression jointly with Yerevan Press Club and the Journalists Union of Armenia made a statement to the effect that unless the definition of "mass communication medium" is changed (Article 3), the further discussion and proposals cannot have sense. The problem here is as follows: this definition was based on an approach according to which the main and only criterion for the print media was the print run (100 copies and more). It turned out that even a hand-written leaflet, multiplied and distributed to the passers-by.

The journalistic associations, on their behalf stressed the need for the law to regulate only the professional activity on information gathering and dissemination. For this reason it was suggested that the media criteria should also include the presence of a permanent title, an ordinary issue, other issuing data.

When the authors of the draft after the first reading changed the old definition and it became acceptable, the journalistic associations continued to work on the document and had lobbied numerous amendments and additions into the draft before the second and the third reading.

Herein the main provisions of the law are considered. First of all, as mentioned, it gives a new definition to "mass communication" and "mass communication medium".

"1. The mass communication (further referred to as communication) - the dissemination of information accessible by unlimited number of people, the main purpose of which is to ensure the constitutional right of a human being to seek, receive and impart information and ideas. The information is realized by dissemination of mass communications media.

2. The mass communication medium (further referred to as communication medium) — the medium for realizing information that is disseminated by subscription or without it, on paid or free basis by:

- periodical issues that have a permanent title, number and a date, are on a material vehicle, the number of copies with identical content of which is not less than 100;
- TV and radio broadcasting;
- public communication network (online medium) as an information resource containing information accessible for unrestricted number of users, regardless of its update periodicity, storage duration and other criteria.

Media are also the periodical communications of the news agencies and other organizations of the kind, directed at entities engaged in communications activities, regardless of their dissemination form, the number of copies published or any other criteria".

In this clause of the law the only questionable matter is online medium. Obviously this refers to the publications on the net. However, in essence it appears that a personal home page can also become a mass medium. Naturally the definition here should be modified in such a way for the media to be only the online publications that are periodically updated and represent public interest.

Article 4 of the Law that refers to giantess for the freedom of expression has undergone numerous changes and now, mostly, corresponds to the expectations of the journalistic community. Let the Article be fully quoted:

"1. The entities engaged in communication activities and journalists operate freely, proceeding from the principles of equality, legitimacy, freedom of speech (expression) and plurality of opinion.

The journalist in the process of exercising professional activities as person at public duty is protected by the legislation of the Republic of Armenia.

2. The mass communication media are issued and disseminated without a preliminary or current state registration, licensing, declaration at a state or other body or a notification of any body.

The TV and radio broadcast licensing is implemented in accordance with the legislation of Republic of Armenia on television and radio.

3. The following are prohibited:

- a) censorship;
- b) pressuring the entity engaged in communications activity or a journalist to get any information disseminated or to get them refuse to disseminate it;
- c) obstruction of professional legitimate activities of a journalist;
- d) discrimination of equipment and materials necessary to disseminate information and ensure the citizen turnover;
- e) restriction of an individual's right to use any media, also those produced and disseminated in other countries".

Unlike the previous document, the new Law has a stronger clause on the protection of information sources (Article 5): their disclosure can only be demanded by court, and only when this refers to the investigation of grave or very grave crimes. The conditions under which this demand can be voiced are also stipulated — in particular when" the need for criminal and legal protection of public interests outweighs the public interest in non-identification of sources and the alternative methods for public interest protection are exhausted". On the initiative of journalistic associations a provision was added that in this case the journalist may in this case demand a closed court session.

However, the Article in question needs further amendment so that to be fully compliant with Recommendation (2000)7 of the CE Committee of Ministers "On the right of journalist not to identify the information source". In the context the Committee to Protect Freedom of Expression developed proposals on the introduction of the provisions into the law that would prohibit the application of repressive measures for disclosing the information source.

Article 6 of the Law refers to accreditation of journalists. It is established that the accreditation is done only for the state bodies. The state structures define the accreditation procedure, but it must have

no restrictions and discrimination. Journalists are to get accredited within 5 days' after applying for it. It is also stipulated that the Procedure defined by any of these bodies cannot be a ground to refuse accreditation to a journalist. A provision has also been added according to which "the accreditation procedure in the Republic of Armenia for an entity engaged in communication activities, a journalist, subject to foreign legislation, is established by the Ministry of Foreign Affairs of the Republic of Armenia".

Article 7 of the Law is titled "Restrictions of Freedom of Expression in Communication". Let it be quoted in full:

"1. It is prohibited to disseminate communication that is legally defined to be a secret or to be promoting criminally punishable actions, as well as violating the privacy and family life of a human being.

2. It is prohibited to disseminate information received by secret video or audio recording who had supposed that s/he is out of sight and hearing of a person, doing the recording, and took sufficient measures for that.

3. The dissemination of information obtained by secret video or audio recording as well as referring to the privacy of a person is allowed if it is necessary to protect public interest.

The dissemination of information obtained by secret video and audio recording is permitted if the measures taken by the person, who is the source of information, aimed at being out of sight or hearing distance of the recording person were obviously insufficient".

In this Article the ban on the dissemination of communication, "considered a secret as the law provided" attracts particular attention. Journalistic associations have been insisting that information carrier should be responsible for information constituting a secret. Should it become known to the journalist, its publication is a matter of ethics of the given journalist and medium. It should also be noted here that Article 9 - "Responsibility of the entity engaged in communication activity" stipulates certain protection in the case of secret publication: "The entity engaged in communication activity is not subject to responsibility for disseminating information legally qualified as secret, if this information was not obtained in a manner legally prohibited or it was not obvious that it was legally qualified as secret.

If the entity engaged in communication activities disseminated information, where the presence of data legally classified as secret would be self-evident, however the dissemination of this information is explained by the need to protect public interest, it is not subject to responsibility".

This of course is not a very reliable protection for journalists and media. For this reason the Committee to Protect Freedom of Expression developed proposals on the improvement of this Article.

As to the refutation or a right to respond (Article 8), the right to demand that the media provide this chance within a month is stipulated, with the text of the refutation of a response being published within a week. In this regard the provision that the refutation should only refer to factual mistakes is very important. The cases, when it is allowed to refuse to publish the refutation or a response are also stipulated.

The issue of financial transparency of media remains topical. The provision on this contained in the Law, is not quite compliant with the European standards as it does not provide for noting the specific natural and legal persons who support the medium. At the same time among the journalistic associations of this country there is a concern that a complete financial transparency under the circumstances can become the "stick" in the hands of the authorities to pressurize the unwanted media. These non-governmental organizations also proposed to include a clause into the Law that would prohibit the existence of state-owned media. This, however, was not accepted.

4. The Law "On Television and Radio"

The RA Law "On Television and Radio" was passed on October 9, 2000. Immediately after its ratification the RA President addressed the Constitutional Court with a demand to review a number of provisions of the Law to determine their compliance with the Constitution of the country. On January 11, 2001 the Court, having considered the objections presented by the head of the state acknowledged that the majority of provisions named indeed contradicted the Constitution and suggested that the National Assembly bring them into compliance with the Fundamental Law.

Later the Law "On Television and Radio" was several times amended. Notably, there is another legal act that is closely related to the regulation of the broadcast sphere, the RA Law "Statutes of the National Commission on Television and Radio", passed on December 28, 2001. The need for this was prompted by the amendments introduced to the RA Law "On Television and Radio".

The adoption of the Statutes was in fact a result of compromise between the executive and the legislative powers. The thing is that according to Article 42 of the first version of the Law "On Television and Radio", the statutes of the National Commission should have been approved by the Parliament. This was one of the items that the Constitutional Court recognized to be contradictory to the Constitution. Another contradictory item was found to be the provision on the approval of statutes of the Council of the Public TV and Radio Company. The dispute between the President and the National Assembly was the control over the regulating bodies. Having introduced the appropriate changes, the Parliament resolved that these bodies will develop their statutes themselves, submit them to the Government, which presents them as a legislative initiative to the consideration of the National Assembly. The latter adopts them as a law. This procedure could not be accepted as non-constitutional. The contradiction was resolved, however, the control over the regulating bodies was completely held by the President and the Government.

Some changes into the Law were introduced also on the demand of TV and radio companies and journalistic associations. The most significant among them refers to licensing. The first version of the law stipulated the need to get a license not only for broadcasting but also for the production of TV and radio programs. It appeared that without a license no one had a right even to develop a program, say, to sell it to TV and radio companies. Naturally, this was against the principles of free entrepreneurship. After the introduction of appropriate amendments only broadcasting on a certain frequency is now subject to licensing.

The Law regulates the activities of both private and public broadcasters. To this day the procedure for the formation and the authority of the National Commission on Television and Radio that regulates the private broadcasting and the Council of Public TV and Radio com-

pany is causing serious debates. According to the Law, both regulating bodies are formed by the President. As a guarantee of their independence is the term of their service, during which the authority of the members could not be stopped, with the exception for several cases (death, personal request, etc). But is this sufficient for the true independence of regulating bodies? In the opinion of journalistic community - no.

The need to ensure the independence of the regulating bodies was also particularly stressed by the Council of Europe. The recommendation of the CE Committee of Ministers of December 23, 2000 was devoted to this very issue. Having become a member of the Council of Europe, Armenia was to follow the demands of this document; however this did not happen in reality. The problem is that the Constitution of the country does not provide for other opportunity: only RA President has the competence to form regulatory bodies.

The journalistic associations during a number of years offer compromise options that on the one hand would not exceed the demands of the Constitutions, and on the other — would allow involving the National Assembly and the public associations into the process of nomination of members of these bodies. Particularly, as the Law stipulates certain requirements: the members of the regulating bodies must be reputable and qualified experts from the spheres of journalism, law, broadcasting management, culture and arts and cannot be members of party administrations, citizens of foreign states (holds only for the members of the Public TV and Radio Company), heads of public and private broadcasting companies, people in contractual relations with TV and radio companies.

Let us consider what the Law says on the procedure for forming the regulating bodies. According to Article 29, "the administrative body of the Public TV and Radio Company (further referred to as the Council), the members of which are appointed by the President of Republic of Armenia". The formation of the other regulating body is described in Article 39, which says: "The National Commission is made of 9 members that are appointed by President of the Republic of Armenia for six years' term of service". These Articles in our opinion do not ensure the independence of the regulating bodies of broadcasting sphere and need principal changes.

By the way, currently in the Parliament there is another draft Law that refers to this problem. However, the document calls to form the regulating bodies only out of the candidates presented by NA factions. From the perspective of journalistic associations, this approach cannot ensure the complete independence of the Council of Public TV and Radio Company and the National Commission, as in this case the regulating bodies would be excessively politicized.

Such a detailed analysis of the formation of regulating bodies by ourselves is due to the fact that it, in our opinion, is the most important and the other provisions of the Law are derivative from it. The broadcast licensing competitions in 2002-2003 showed that the concern of the journalistic associations was justified: National Commission, appointed by one person cannot be independent and will always be following his political order.

Thus, shortly before the elections in Armenia this body actually deprived of air the only TV company that was not subjected to the pressure of authorities — "A1+", by calling it a "loser" in the competition and not granting a license. The same was the lot of independent TV company "Noyan Tapan". During the past year and a half "A1+" participated in almost all the broadcast licensing competitions and every time the "independent" Commission deemed it lost, despite the objective advantages as compared to the competitors.

Similar partiality is observed in the regulation of the public television. While the Law prohibits the prevalence of any political orientation in the programs of the Public Television of Armenia, this clause so far is not applied in practice — the pro-governmental stance of the PTA is obvious.

In general, the Law clause on the Public TV and Radio Company also defines the competence of the Council, the procedure for appointing executive directors of the public television and public radio, restricts the percentage of commercial advertising to 5% of the total broadcast time (according to the transitional provisions, this requirement will come into force starting from 2005, and till that time the limit of 10% is stipulated), the public broadcasters are prohibited to interrupt their programs by commercials.

Let some other provisions of the Law be considered as well. In particular, Article 5 referring to the language of the TV and radio pro-

grams. According to it, "the TV and radio programs, the motion pictures, documentaries and cartoons in foreign languages, as well as the segments (parts) in foreign languages in the Armenian-language programming are aired with simultaneous translation into Armenian — by dubbing or titles". The transitional provisions allow broadcasting programs in foreign languages till 2005 with a certain scale: 6 hours in 2003, not more than 4 hours in 2004.

At the same time Article 9 shows that the locally produced programs cannot amount to less than 65% of airtime of a TV company. The transitional provisions of the Law also regulated this question by an established scale. Thus, the volume for 2003 was 45%, and for 2004 - 55%. It should also be noted that the local production is defined by the law to be not only the programs produced in Armenia, but also those in Armenian translation. As to foreign TV and radio companies, it is stipulated that their programs must be rebroadcast in full on the basis of an interstate agreement or a license of a National Commission, using not more than 1/5 of the existing frequencies (Article 10).

On December 3, 2003 the Parliament passed another Law "On Introducing Amendments and Additions to the RA Law 'On Television and Radio'". This was due to the fact that the acting law was again subjected to the evaluation of the Council of Europe. Changes and amendments, as their authors maintain, have been developed by taking into consideration the comment received, dated July 26, 2002. Yet, as the analysis shows, the main objections of the CE expert have not been taken into account.

First of all, the comment pays particular attention to the procedure of forming the National Commission on Television and Radio and the Council of Public Television and Radio Company. It notes specifically the need for such a policy for the appointment of regulating bodies that would ensure the transparency of this procedure and the freedom from political influence during its activities. At the same time it is noted that the work of the National Commission must be the primary occupation of all its members.

Meanwhile, the amendments and additions stipulate the following procedure for the appointment to the vacancies in the Council of the Public TV and Radio Company and the National Commission on Television and Radio:

"In case of a vacancy in the Council the Chairman of the Council gives a written notification to the President of the Republic of Armenia who, within a week, announced a competition for the vacancy in mass media.

Anyone can be nominated a candidate to membership in the Council, in accordance with the requirements of this Law.

At least ten days are allocated for the candidate nomination. Information about the candidates is published in the mass media.

The President of Republic of Armenia, in accordance with the competition procedure approved by himself, appoints one of the competition winners to be a member of the Council. A communication on this with the necessary justification is published in the mass media".

The same definitions were used also with regard to National Commission:

"In case of a vacancy in the National Commission the Chairman of the National Commission a written notification to the President of the Republic of Armenia who, within a week, announced a competition for the vacancy in mass media.

Anyone can be nominated a candidate to membership in the National Commission, in accordance with the requirements of this Law.

At least ten days are allocated for the candidate nomination.

Information about the candidates is published in the mass media.

The President of Republic of Armenia, in accordance with the competition procedure approved by him, appoints one of the competition winners to be a member of the National Commission. A communication on this with the necessary justification is published in the mass media".

In our opinion, these novelties cannot change the situation for the better and do not follow the provisions of the Recommendation of the CE Committee of Ministers of December 20, 2000, as in any case the winner of the competition is determined by a subjective decision of the President.

With regard to Article 5 of the Law "On Television and Radio" it is noted in the expert comment mentioned above that no language requirements should be introduced to programs aired in real time mode, similarly to the exception made for the coded programming in Article 27 of the Law.

With regard to the demand of Article 9 on ensuring 65% of the air-time by the locally produced programming there is doubt as to the ability of Armenian TV and radio companies to meet it. It is also proposed to introduce a clause; according to which 50% of the airtime can be given to European programs (we believe this provision to be quite acceptable in the context of European integration).

According to the expert evaluation, Article 10 causes conclusion, defining two notions — rebroadcasting of foreign TV and radio programs in full by an interstate agreement and the rebroadcasting of these programs on a contractual basis. At the same time during the rebroadcasting the demand to adhere to the provision of Article 5 and 9 is considered unnecessary.

It should be noted here that all these expert evaluations have not been taken into account by the authors of the RA Law "On Introducing Amendments and Additions to the RA Law "On Television and Radio"

Notably, with regard to Article 17 amazement was voiced in the expert evaluation: why is the share of foreign capital restricted? It was noted that this approach, firstly, does not contribute to the investment inflow into the broadcast area, and secondly, can become a reason for similar restrictions on the Armenian capital participation in other countries. This remark has been partly taken into account.

By the way on December 3, 2003 the National Assembly passed another law on introducing amendments to the Law "On Television and Radio". It obliges the Public Television of Armenia to air one children program and one newscast with hand-language translation (for the hearing impaired people) or with subtitles. The same requirement but for 5% of children programs and newscasts is posed by the Law towards the private TV companies.

5. *Libel and Insult*

In 2003 during the discussion of the new Criminal Code of the Republic of Armenia the most heated debates evolved around the abolishment of the capital punishment — one of the demands of the Council of Europe. This issue for a while pushed out of the limelight another, nonetheless important problem — the criminal persecution for libel and insult. And while many public and international organizations expressed their distinct position, insisting that such offences be considered as a part of civil law, however, the authors of the Code did not give in. On June 17 the heads of the diplomatic missions of 6 countries, 11 international organizations and local NGOs (including the Committee to Protect the Freedom of Expression) addressed an open letter to the Chairman of the National Assembly Arthur Baghdasarian, calling to abolish the criminal libel and insult. This issue was also raised on the OSCE Human Dimension Conference held in October 2003 in Warsaw. In particular the US representative Ronald McNamara, expressing the concern of the USA over the worsened situation of the freedom of expression, press and information in the OSCE countries, said: "We join the appeal of the OSCE Yerevan Office to the Armenian authorities to follow the example of Romania and annul the law on criminal libel and insult".

Meanwhile, Articles 135 and 136 of the new Armenian Criminal Code contain provisions that contradict the commonly accepted international norms. Thus, Article 135 says:

"1. Libel, that is the dissemination of intentionally false information, relating to the honor and the dignity of another person or diminishing his/her reputation is published by a fine amounting to 50 or 100 minimal wages or reformatory labor for up to one year's period.

2. Libel manifest in public speeches, in publicly demonstrated works or mass media, is punished by a fine amounting to 100 or 200 minimal wages, or reformatory work for a period from one to two years, or arrest for up to two months.

3. The actions, provided for by the first or the second parts of the present Article, if accompanied by charge of an individual of a grave or very grave crime, are punished by a reformatory labor for up to two years, or arrest for one or two months period or imprisonment for up to three years".

Article 136 refers to insult. According to it:

"1. The insult, that is, the relegation of honor and dignity of another person in an indecent form, is punished by a fine amounting to up to 100 minimal wages or by reformatory labor for up to six months.
2. The insult, manifest in public speeches, in publicly demonstrated works or mass media, is punished by a fine making from 50 to 200 minimal wages or reformatory work for up to one year".

We believe that these articles are a convenient tool for the authorities to suppress the freedom of expression and cannot be justified by the second part of Article 10 of the European Convention of Human Rights. The Declaration, adopted after the meeting in December 2002 of the UN Special Rapporteur for Freedom of Expression and Opinion, the OSCE Representatives on Freedom of the Media and the Special Rapporteur of the Organization of American States on Freedom of Expression. The document says: "Criminal responsibility for the libel is not a justified restriction on the freedom of expression. All the laws on criminal libel must be abolished and in case of necessity be replaced with appropriate civil legislation". We believe this statement to be most comprehensive.

A cause of even greater concern is Article 318 of the RA Criminal Code, titled "Insult of the Representative of Authority".

"1. Public insult of representatives of authorities in relation with his/her performance of professional duty is published with a fine of 100 to 200 minimal wages or reformatory labor for a period from 6 months up to a year.

2. The same offence, manifest in public speeches, in publicly demonstrated works or mass media, is punished by a fine making from 200 to 400 minimal wages or a by arrest for one to three months or imprisonment for up to two years".

This Article, in our opinion, is contradictory not only to Article 10 of the European Convention of Human Rights but also the case law defined by several decisions of the European Court of Human Rights (Oberschlick v. Austria, Thorgeirson v. Iceland, etc.). Moreover, even the narration of the Article in question is quite vague: the notion of "public insult of representatives of authorities in relation with his/her performance of professional duty" is unclearly defined and can give rise to various interpretations. Also, any strong criticism of an official by media can be qualified as insult with the subsequent application of punishments stipulated.

The conclusion is obvious: following the example of other countries, the Armenian authorities must decriminalize libel and insult, abolish the articles above and until an appropriate law is passed - refrain from applying them. A number of other states where similar measures still exist actually deal with the issue in this very manner.*

Notably, the RA Civil Code contains a provision on this issue. Article 19, titled "Protection of Honor, Dignity and Business Reputation" says: "Any citizen has a right to demand a refutation of information

* **Note.** This report was ready for publication when the National Assembly of the country passed the RA Law "On Introducing Amendments and Additions to the RA Criminal Code", in accordance with which these Articles have been amended too. According to the RA Minister of Justice David Harutiunian, the amendments made are a compromise option to satisfy the demand of decriminalization libel and insult. According to the amendments, the second parts have been removed from Articles 135 and 136, that is, the libel and insult, displayed "in public appearances, publicly demonstrated works or media" are no longer separately defined. The punishment have also been reconsidered: now the libel (Article 135) is punished by "a fine ranging from 100 to 500 minimal salaries" (thus, the fine sizes increased but the phrase "reformatory labor of up to a year" has been removed). The repeated offense is punished by a "fine ranging from 200 to 1,000 minimal salaries or imprisonment for up to year".

Article 136 on insult now goes as follows:

"1. Insults, that is humiliation of honor and dignity of another person in an obscene manner, is punished by a fine ranging from 100 to 400 minimal salaries.

2. The offences provided for by the first part of this Article, if repeated, are punished by a fine ranging from 200 to 800 minimal salaries".

As it can be seen, the punishment of imprisonment is abolished from this Article.

Finally, Article 318 has been amended and is now narrated as follows:

"1. Public insult of a representative of authority, related to his/her performance of the professional duty, is punished by a fine ranging from 100 to 500 salaries.

2. The offences stipulated by the first part of this Article, if repeated, are punished by a fine ranging from 300 to 1,000 salaries or imprisonment for up to a year".

Thus, by amendments the punishment of reformatory labour for up to 6 months has been abolished from the first clause, but the fines have increased. From the second clause, similarly to Articles 135 and 136 the expression of "in public appearances, publicly demonstrated works or media" has been removed, but a punishment for repeated offence is stipulated.

In our opinion, the amendments overall do not solve the problem, as these Articles are still retained in the Criminal Code and media can be criminally prosecuted by them. We still insist that these Articles must be fully abolished from the Criminal Code, and the responsibility for libel and insult be decriminalized. Besides, no distinction should be made here between the addressees of the insult — the representative of authority or a regular citizen.

that relegates his/her honor, dignity and business reputation in court, unless the person that disseminated this information is able to prove its validity". And the RA Law "On Mass Communication" defines the cases when the media are exempt from liability (if these are quotations from official documents or public statements, etc.). All this can be a basis for the transfer of liability for libel and insult from the criminal sphere into the civil law.

6. Media Regulation during Elections

In Armenia there is no legal regulation for political advertising. Article 4 of the RA law "On Advertising", passed in April 1996, says: "This Law does not regulate the relations within the political advertising sphere". These relations, in fact, are only regulated during elections and referenda, in accordance with the provision of the RA Election Code. Should one follow the principle of "What is not prohibited is allowed", one can suppose that in between the elections the political advertising is allowed.

During the election campaigns the media activities, namely the political advertising, the pre-election promotion, as well as the coverage of the pre-election campaign itself, as we note, are regulated by the Election Code. A reference to it is made also in the Law "On Television and Radio", Article 11 of which stipulates: "During the promotion for referenda and elections as well as during their conductance the TV and radio programs are aired according to the legislation on elections and referenda".

However, when making a reference to the electoral legislation, this Law, however, provides for certain regulation. The continuation of the same Article says: "During the period specified the TV and radio companies are prohibited from broadcasting political or any other promotional pieces as newscasts, editorial, documentary, authorship or other programs. Airing of these programs must be accompanied by a note on the screen: "political advertising" or "pre-election promotional program", and in case of radio broadcasting a reminder about it should be voiced at least three times during each program.

During the pre-election promotion the broadcasters make a public statement about the cost of the airtime for paid political advertising and other promotional pieces. Anyone willing can use the airtime on contractual basis and on equal terms".

The need to create equal conditions for the candidates and parties by the media is also noted in the Election Code, according to which (Chapter 4, Article 18, Clause 3) the candidates and parties are guaranteed equal conditions of media use — airtime, newspaper space, pricing, etc. This is essentially the only clause (along with the appropriate provision of the Law "On Television and Radio"), which is equipotent for public (state) and private media.

Article 20 of the same Chapter 4 of the Election Code is fully devoted to the pre-election promotion by media. Articles 22 and 23 are partially concerned with this issue, too. They all, mostly, regulate the implementation of pre-election promotion on the public television and public radio, as well as by means of the state print media. In particular, it is stipulated that a candidates (parties during parliamentary elections) have a right to free use of airtime on the public television for not more than 60 minutes, on public radio — for not more than 120 minutes, and on paid basis — 120 and 180 minutes respectively.

The Code prohibits interrupting the TV and radio programs that are classified as pre-election promotion, by commercial advertising; to publish the results of public opinion polls that reflect the popularity rating of the candidates during the last 7 days of the pre-election promotion; to promote the candidates on the voting day and the day before that.

However, the media monitoring held during the presidential and parliamentary election campaigns revealed, along with other phenomena, a number of deficiencies with regard to legal regulation of the pre-election campaign.

Let some of them be considered at greater detail and our conclusions be presented.

1. Vagueness starts with Article 111 of the Law "On Television and Radio", called "TV and radio programs during referenda and elections". It says that during the period prior to elections and referenda promotion, as well as during them, the TV and radio programs are broadcast in accordance with the legislation on elections and referenda.

Meanwhile, the RA Election Code does not define "period prior to elections and referenda promotion" in any article, which results in differing interpretations and gives ground for accusations to the

address of the media: which is this periods — the prior month? May be a year?.. In fact, this period starts the next day after the elections are held and lasts for four or five years.

To eliminate this vagueness we propose to either give a definition to "period prior to elections and referenda promotion" in the Election Code, or introduce changes in Article 11 of the Law "On Television and Radio". In particular, the following definition can be given: "period since the announcement day of elections and referenda up to the day of the official promotion start".

2. Article 20 of the RA Election Code says: "1. Candidates for RA presidency and parties registered by proportional representation system for elections to the RA National Assembly, have a right to free and paid airtime (also on live air) on the public television and public radio. 2. The procedure for providing free airtime on public radio and public television to the RA presidency candidates and parties, registered by proportional representation system for elections to the National Assembly, is determined by the Central Election Commission".

A similar definition was given to the "Procedure for Pre-Election Promotion of RA Presidency Candidates in Mass Media", ratified by the CEC resolution of January 15, 2003, basing on the Electoral Code. It is not the matter of the Procedure being good or bad. Currently, besides the Public Television of Armenia Public Television "Shirak" of Shirak region also operated, the activities of which were actually out of the scope of both Article 20 of the Electoral Code or the above-mentioned CEC resolution. Thus the candidates were deprived of an opportunity to use on of the public channels, and this channel received no paid advertising, as the monitoring results show.

3. Clause 3 of Article 20 of the RA Electoral Code says: "Candidates and parties have also a right to use the air of the radio and television, established by local self-administration bodies, on equal terms".

This Clause is unnecessary because it contradicts to the RA Law "On Television and Radio", Article 16 of which notes: "There can be public and private TV companies in the Republic of Armenia". According to Article 17 of the same Law, "the following cannot be founders of private TV companies: a) state administration bodies or local self-admin-

istration..." As it follows from Article 28, the Public Television is established by the state. It follows from these two quotations, that there simply can be no "radio and television, established by local self-administration bodies...".

4. As to the application of the provisions of the same Article 28 of the RA Law "On Television and Radio", titled "Statutes and Principles of the activities of Public Television and Radio Company", it says in particular that in the programs aired by the Public Television and Radio Company the prevalence of one political position is prohibited.

This definition in itself gives rise to questions: first, how is the prevalence of one political position determined; secondly, in case such facts are revealed, what should the consequences be for the Public Television and Radio Company in General and during the pre-election campaign in particular?

We do not object to this definition, moreover, we actually support it. But we are concerned with its application in practice. In particular, on the air of the Public Television of Armenia — during the previous years as well as during the recent election campaigns, particularly, the presidential run-up, one point of view was definitely prevalent. And there have been no legal consequences. For this reason we believe that this demand should have appropriate mechanisms of application.

7. *Adjacent laws*

Advertising. Articles 9 and 10 of the RA Law "On Advertising", adopted in 1996 and regulating the relations in this sphere, refer to media directly. The former Article is envisaged for electronic media, the latter — for the print publications. In 2002 the Parliament introduced amendments into the RA Law "On Advertising" having restrictive nature. Yet, such a restrictive stance is characteristic of the whole Law. (A clarification must be made here - the Law regulates the advertising of goods and services. As to the political advertising during election periods, it, as it has already been mentioned, is regulated solely by the Electoral Code).

Thus, Article 9 prohibits interrupting by more than one commercial break the radio programs that last up to 10 minutes and the TV programs that last to 20 minutes. In the official newscasts the advertis-

ing is completely prohibited. The duration of special advertising programs is restricted to 5 minutes in an hour.

The Law contains an Article titled "Peculiarities of advertising of certain good types" (Article15) which reads, after the amendments: "The advertising of strong alcoholic (with spirit containment of 20% and more) drinks (except for the cognac) and the tobacco goods".

Besides, the next change is made: "It is prohibited to place advertising of tobacco goods and alcoholic beverages on the first and the last pages of newspapers or the first and last pages and the covers of magazines". As well as: "At least 10% of the space in the advertising of tobacco goods placed in the print mass communications media, the outdoor billboards, posters, announcements, electronics boards and other technical devices as well as on vehicles must be given to warning information on the harm of tobacco use". The Law also regulates the decency of the advertising as well as the protection of minors from the production, placements and dissemination of advertisements.

There are also special restrictions for the Public TV and Radio Company. They are presented in Article 28 of the RA Law "On Television and Radio", saying: "In Public Television and Radio Company a) the commercial advertising must not exceed 5% of the total airtime, b) the programs broadcasted must not be interrupted by commercial breaks, ...d) during the mourning days announced by the state the broadcasting of advertising... is prohibited".

Copyright. The first law on copyright and adjacent rights in Armenia was passed in 1996. However, after the new Civil Code came into force in 1999, as well as because of the need to bring the legislation into compliance with international standards, a new Law "On Copyright and adjacent rights" was developed and adopted by the Parliament on December 8, 1999, signed by the President on January 12, 2000). The copyright is also regulated by Chapters 62-64 of Section 10 of the Civil Code. Later, in 2001, Armenia joined the Bern Convention "On the Protection of Written and Artistic Compositions", and in 2002 — to the Convention "On the Protection of the Rights of Performers, Audio Record Producers and Broadcasting Organizations".

According to Article 6 of the Law "On Copyright and Adjacent Rights", the object of the copyright cannot be "... the programs that present press information on daily news and current affairs". (A similar provision is also made in the RA Civil Code). Article 24 of the same Law says: "copyright for the audio recording and video recording of an interview belongs to both the person who gives the interviews and the person who holds it and performs the audio records of the interview as co-authors, unless there is a different arrangement between them.

Broadcasting of the audio or video record of the interview is only allowed upon the consent of the interviewee".

The Law stipulates a free use by the broadcasting companies of the audio and video records of short-term use (Article 17) as well as works in general (Article 13). In compliance with the latter Article, the reproduction and quotation of already published — in this or that manner — works, speeches, etc "without the consent of the author or other holder of the copyright and without remuneration, but with a mandatory mentioning of the author and the source".

Conclusion

Having joined the Council of Europe, Armenia assumed two commitments in the media sphere: a) to pass a new law on mass media within a year; b) to transform the national TV channel into the public one that would be governed by an independent administrative board.

The new Law "On Mass Communication" that came into force in February 2004 and replaced the Law "On Press and Other Media Outlets" passed in 1991, by our estimation, is more progressive and is mostly compliant with the commonly accepted international standards. Its important achievement is the fact that it abolished the previously existent demand of mandatory registration of media; in comparison with the old law the protection of information sources, journalist and media when publishing state and other secrets, is strengthened.

However, the Law needs improvement. In particular, on the same issue of information sources it is necessary to fully consider the provisions of the Recommendation of the CE Committee of Ministers

R(2000)7 "On the Rights of Journalists Not to Disclose the Information Source" on the unacceptability of repressive measures to reveal the sources. The degree of protection of journalists and media when publishing state and other secrets should be enhanced as well.

In 2003 in Armenia the Law "On Freedom of Information" was passed which, in the opinion of both local and foreign experts is rather liberal and mostly compliant with international standards. Concern is caused by the fact that in 2004 at the governmental backstage the possibility for introducing amendments and additions is considered, a draft is being prepared which, if adopted in its initial version, will significantly deteriorate the newly enforced Law "On Mass Communication".

However, the most serious problem of the media regulation in Armenia is contained in the number of provisions of the Law "On Television and Radio". Its application deprived the well-known independent TV company "A1+" of air. In this Law, even after the introduction of amendments and additions, the unacceptable — also from the perspective of the international standards - procedure for forming two regulating bodies, the Council of Public TV and Radio Company and the National Commission on Television and Radio is retained. They in essence remain controlled by the President of the country and therefore are not independent — which is contrary to the Recommendations of the CE Committee of Ministers R(96)10 "ON the Guarantee of Independence of the Public Broadcasting" and R(2000)23 "On the Independence and Functions of the Regulating Bodies in the Broadcasting Sector".

Finally, the issue of decriminalization of libel and insult remains essential. In this regard in the opinion of the non-governmental organizations of the country, primarily the journalistic associations, Articles 135, 136 and 318 must be removed from the RA Criminal Code and until an appropriate normative act is enforced their applications should be suspended.

AZERBAIJAN

1. General mass media legislation

Article 50 ("Freedom of information") of the Constitution of the Azerbaijan Republic grants each citizen of the Republic a right to freely search, purchase, transfer, compile and disseminate information. The same Article defends freedom of mass information, prohibits state censorship in mass media. Comparison between Article 10 of the European Human Right Convention and the above-stated constitutional standards makes it possible to conclude that no differences between them are available.

Provisions of Article 50 of the Constitution are specified in some standard legal acts. These include Laws of the Azerbaijan Republic "On Mass Media" (adopted on 7 December 1999, latest modifications and amendments made on 13 January 2004), "On State Secret" (17 January 1997), "Of information, Informatization and Information Protection" (3 April 1998), "On Freedom of Information" (19 June 1998, latest modifications and amendments made on 1 February 2000), "On Communication" (20 June 1997), "On Advertisement" (3 October 1997, amendments made on 13 January 2004), "On state Language" (16 January 2000), "On Television and Radio Broadcast" (25 July 2002) and the new Election Code of the Azerbaijan Republic with effect from 27 May 2003. In effect are also other laws regulating activities of legal entities, including mass media editorial boards.

As is seen, the mass media legislation of the country is a comparatively new process advancing at rapid paces. Regretfully, there are serious deficiencies in the sphere of protection of non-proprietary rights of mass media and journalists. Some laws in draft, submitted to the Parliament (Milli Majlis) for consideration and dealing with principles of mass media activities, are directed to restricting rights of journalists and independence of editorial staff, introducing additional duties and new degrees of responsibility. In other words, these laws in draft display government's desire to tighten up mass media, especially TV. Acquaintance with the practice of law application is also indicative of some flaws in the sphere. The use of vague and indistinct formulations in some legislative acts results in difficulties the courts are faced with when applying such legal standards. A stable judicial practice is deficient, differences are typical for the

Supreme Court Constitution court of the Azerbaijan Republic when interpreting some matters of principle, particularly, a question of cast indemnity to legal entities for moral damage, damage to business reputation. Attempts to infringe freedom of mass information are in progress. Main instrument of the authorities to combat independent press and disagreeable journalists is claims on protection of honour, dignity and business reputation.

As is known, on 25 January 2001 Azerbaijan joined the Council of Europe as 43rd member of the organisation. On this occasion the country entered into several obligations, including these on mass media:

1. To guarantee freedom of expression and independence of mass information media, particularly, except the use of administrative measures aimed at restricting freedom of mass media.
2. Within two years after joining the CE, to analyse and modify mass media legislation.
3. To reorganise the state national television into the public channel with independent administration.

Under the obligations, changes and amendments were made in the Law "On Mass Media". Common practice for most democratic countries is the regulation of broadcasting mass media activities on the basis of standards, as set forth in the separate law on television and radio broadcast, not in a brief paragraph of the law on mass media. In this connection, Chapter V of the Law "On Mass Media", which specified legal and economic principles of TV companies' activity, was annulled as far back as in 2001. Simultaneously there started a work over a new law on telecasting. Regular changes were made in the Law "On Mass Media" on 16 March 2002, which contained positive items on guaranteeing mass media independence and ensuring access of mass media to information under the authority of state bodies. And, finally, the latest changes and amendments to the Law "On Mass Media" were made on 13 January 2004 due to the entry into force of the new Law of Azerbaijan Republic "On Television and Radio Broadcast". In considering that the Law "On Mass Media" is a basic normative act, which regulate mass media activity in Azerbaijan, an item from the Law "On Television and Radio Broadcast" was added in the Law "On Mass Media" (clause 1, Article 5) and changes were concurrently made in Articles 14 and 21, which

broached not only press but television and radio broadcasting as well. In assessing the work positively, some experts allege that separate provisions of the Law "On Mass Media" are still inconsistent with international freedom of speech standards. They are prone to think that the name of the Law has to be changed, since it is designed to regulate activities of press and information agencies.

Let us consider major provisions of the Law of Azerbaijan Republic "On Mass Media" in force at the date of the report preparation.

Rights to print media establishment, their registration

Under international standards, the registration of print mass media, which provides the possibility of refusal of the registration solely for technical reasons, is illegal. Such a demand cannot be regarded as necessary restriction of the freedom of speech, since it impedes free flow of information and pursues no legitimate purposes to comply with international standards. The practice shows that a special registration procedure of print mass media, as set forth in the law, might form the subject of abuse.

Rules of print mass media establishment in Azerbaijan are specified in Chapter 3 of the Law "On Mass Media". As a whole, they are consistent with democratic standards and infringe no right to the freedom of speech. Thus, no license of state bodies is required to institute printed matter. A legal or physical entity, desirous of instituting his own newspaper or magazine, should officially apply to an appropriate body of executive power (Ministry of Justice) 7 days before the issue of the first number (Article 14). The application will list name, purpose, periodicity, legal address of the printed matter; name of founder, editor (editor-in-chief) in any, a registered charter, if a legal entity is a founder or an editorial staff of the printed matter.

When spreading the printed matter without official notification of an appropriate body or identifying non-authenticity of information in this notification, the executive power will be entitled to file an action on termination of the printed matter (newspaper or magazine). Article 19 of the Law provides for closing down of the printed and termination of its activity. As viewed by legal experts, this is the unique case where Article may be applied on legal grounds.

Protection of information sources

The Law "On Mass Media" secures protection of information sources of journalist. Under information sources are meant documents, other information carriers, mass media reports, open statements, which reflect information as set forth in the legislation (Article 7 of the Law "On Freedom of Information).

The legislation stipulates cases where divulgence of the source of information is not allowed (Article 11 of the Law "On Mass Media"). Thus, editorial staff or journalist will not be entitled to disclose a source of information in their reports and materials, if delivered on condition of their anonymity. Besides, it is prohibited to disseminate information related to preliminary investigation and inquiry without permission of investigator, prosecutor of judge, engaged in running the investigation, as well as information related to minors changes with committing crimes without consent of the latter or their legal representatives.

Recommendation of the CE Committee of Ministers R (2000) 7 secures as initial principle "the right of journalist not to disclose his sources of information". The second principle provides for right of other persons to preserve confidentiality of the source of information.

In considering that the Law "On Mass Media" in Azerbaijan recognises a right of editorial staff not to disclose the source of information, it may be concluded that the given right applies not only to journalists, but "other people" employed in the editorial staff as well.

Principle 3 of the Recommendation R (2000) 7 provides for restriction of the right to non-disclosure of the source of information. The clear up the principle, a public interest in preserving the confidentiality of the source of information might be superseded by the necessity its disclosure with the purpose of "human life protection", "prevention of heinous crime" or securing "protection of a person charged with criminal case or brought in a verdict of quality of committing a grave crime".

Clause 2 of Article 11 of the Law "On Mass Media" secures restriction of the right to non-disclosure of the source of information. It says that an editor of the printed matter in charge of the publication of

either information and/or a journalist may be compelled by the court to disclose the source of information, if the case is being investigated or considered by the court. Clause 3 of Article 11 refers to the cases as follows:

1. for protection of human life;
2. for prevention of heinous crime;
3. for protection of a person charged with or guilty of heinous crime.

As is seen, the given provision is consistent with the principle as set forth in the above-mentioned Recommendation.

Principle 4 of the Recommendation (evidence, alternative to a journalist source) says that "in case of legal action brought against a journalist on the basis of alleged damage to honour and reputation of a person, the authorities may, with the purpose of establishing truthfulness and incorrectness of such allegation, consider all the evidence available to comply with the national procedural right and are entitled not to demand from a journalist to disclose the source of information".

From this principle's point of view, deserving attention is clause 3 of Article 11 of the Law, which mentions cases where the court is entitled to compel editor or journalist to disclose the source of information. As is seen, the court is not entitled to demand fulfilment of this clause in case of defamation, i.e. damage to honour and business reputation of a person.

Thus, the Law clearly identifies cases, where a journalist should disclose the source of information. Besides, under clause 3 of Article 63 of the Constitution of the Azerbaijan Republic, "a defendant should not prove his innocence in committing a crime", i.e., courts should consider all other alternative means of the guilt of journalist, not to demand from him to prove his innocence through disclosing the source of information.

Under Principle 5 of the Recommendation, journalists should be notified by the authorities about their right not to divulge information that helps identify a personality of the source, as well as about restrictions on this right before a demand is put forward to disclose this information.

Unfortunately, Azerbaijani courts frequently violate this principle in practice, availing themselves of the fact that journalists are not informed about their rights, so instead of giving necessary explanations the courts threaten journalists and make them disclose the source.

Responsibility

The Law "On Mass Media" provides for responsibility for delinquencies committed by journalists, particularly, abuses of rights and freedoms of mass information. An editor (executive editor) and journalists (authors) of mass information bear civil, administrative, criminal, etc. responsibilities in accordance with the legislation of the Azerbaijan Republic for delinquencies as follows: disclosure of information prohibited by the Law; lack of the control from editor-in-chief (editor) of mass media for compliance of disseminated materials with law requirements; spreading of information without indicating its source, except for cases as set forth in the Law; encroachment on personal life of citizens; publication or broadcasting of pornographic materials (Article 60 of the Law "On Mass Media").

A full list of the violations of the Law "On Mass Media" with respective responsibility of mass-media information is referred to in Article 61.

Sanctions imposed on the freedom of speech should be proportional to the violation, and until a defended is given opportunity to be heard no decision on the type of action can be adopted in each specific cases. Sanctions as set forth in the law should start with warning. All the sanctions applied should be transparent for revision by competent bodies in compliance with the legislation of the country.

From standpoint of common democratic standards, it should be noted that such a sanction as termination of mass media activity is a very tight measures, which may be applied in exceptional cases of gross violation of the Law. A main reason for termination of the activity of printed matter in Azerbaijan is a violation of Article 14 of the Law "On Mass Media", which is none-other than illegal restriction of the freedom of speech. Besides, it is essential to make appropriate amendments in Articles 60 and 61 to determine a list of sanctions to be applied to printed matter.

It has to be kept in mind that the right to freedom of speech is not absolute. The international legislation and domestic laws of many countries admit that the freedom of speech may be restricted under certain circumstances. For example, Article 10 (2) of the European Convention on Human Rights says as follows:

"Implementation of these freedoms with respective duties and responsibilities is attended by certain formalities, conditions, restrictions or sanctions, as set forth in the law and applied in democratic societies to ensure national security, territorial integrity or social order with the purpose of preventing disorders or crimes, for protection of health and morality, reputation and rights of persons, prevention of information divulgence or ensuring of authority and impartiality of justice".

Thus, any restriction of the freedom of speech should thrice be verified to justify its application, as set forth in the Convention. First, it is the law that prescribes the restriction. The European Court decided that the given demand would be complied with if the law is accessible and "formulated precisely to enable a citizen to regulate his behavior". Second, the restriction should follow one of goals as listed in Paragraph 2 of Article 10 of the European Convention. The given list is exhausting and thus the restriction, which does not follow one of these goals, violates the Convention. Third, the restriction should be sufficient to attain goals as set forth in Article 10. A word "sufficient" implies that there "should exist urgent social necessity" to impose the restriction. Reasons put forward by the state to justify the restrictions should be "relevant and sufficient" and the restrictions proper should comply with the goal.

2. Broadcasting legislation

As has been noted in the report, it is a generally accepted practice in most democratic countries to apply a special procedure of broadcasting mass media management as set forth in a separate law on television and radio broadcast.

The new Law of the Azerbaijan Republic "On Television and Radio Broadcast" provides for legal, economic and organisational principles of TV and radio activity designed for securing the freedoms of information, thought and speech of each and free discussions. At the same

time the Law abounds on provisions, inconsistent with international standards and restricting TV and radio broadcasters.

State broadcasters, jointly with private, public and municipal broadcasters, form the basis of the national television, and radio in Azerbaijan. As is known, when joining the CE in 2001, Azerbaijan pledged to transform the state television channel into the public one with independent administrative management. However, the Law "On Television and Radio Broadcast", as adopted on 25 July 2002, does not provide for the transformation of the state channel into the public one. Instead, the Law determines a procedure of public broadcasting establishment (Article 9), which, the document says, is to be also established "by an appropriate body of executive power".

Under Article 9 of the Law "On Television and Radio Broadcast", a public broadcaster will be established to comply with clause 32 of Article 109 of the Constitution of the Azerbaijan Republic (powers of President). Non-commercial and non-political organisations with members exceeding 1000, public, creative, religions and civil association, as well as the National Academy of Sciences are responsible for nomination of candidatures to the Board of Broadcasting to be elected on a competitive basis. The public television is funded at the expense at the expense of subscriber's fees, unless otherwise provided. Television and radio activities of public broadcaster will be governed by an appropriate law and charter, as set forth in the law.

Another law to regulate the given type of broadcasting — the Law "On Public Television" has not yet come into effect. With three Parliamentary readings in January 2004, it was not signed by President, and recalled for completion. Like the Law "On Television and Radio Broadcast", this one abounds in many provisions, country both to the European standards and current laws of the Azerbaijan Republic.

With all the stages of Parliamentary debates travelled, the new Law does not stipulate the transformation of the state television into the public one. In other words, a separate public channel is meant, which, according to Article 5, is a legal according to Article 5, is a legal entity.

The most debatable issue of the said Law is Article 21, which regulates the creation of the Board of Public Broadcasting with members being elected by a contest commission. Article 21 does not specify, who will be responsible for setting up of the contest commission. It just mentions that the commission will be formed of "popular representatives of intelligentsia, workers of science and art". Also deficient is a mechanism of the contest commission formation. Definitions such as "popular representatives of intelligentsia, workers of science and art" are indistinct and unclear. The law shall not be based on diffuse, abstract definitions, but on distinct and precise formulations. In particular, representing the Board are to be candidates from the Academy of Sciences, press council, government, media-related NGO's, ombudsman, religious organisations, higher educational institutions (by means of lasting lots). However, it follows from the Law that an executive body will be responsible for setting up of the contest commission.

Clause 6 of the same Article points out that in case of recall of Board members they will be substituted for reserve members. However, a member of the Board may be incapable due to resignation, death, etc. These niceties found no parallel in the draft.

Complicating factor is Article 23.15. It says that "a member of the Board failing, for some reason or other, to fulfil his duties" may be withdrawn. Other members of the Board with 2/3 of votes shall decide on this issue. Such an approach is fraught with preconceived attitude of most Board members to their opposition-minded counterparts.

Article 24.1.6. of the Law is designed to regulate relations between the Board and deputies director of the public television. Thus, not less than half of Board and deputies director of the public television. Thus, not less than half of Board members shall approve a candidature nominated by director to act as his deputy. Should "the Board fail to arrive at common conclusion", a nominated candidature will be considered as valid. In this case, responsibilities of the deputy, not backed by the Board, will turn into fiction, and the whole of power will be concentrated in the hands of director general. Another legal blunder is concealed in the fact that under a document, adopted by the Parliament, chairman of the Board will be elected by means of voting Board members, though approved by the same "executive body", .i.e. President.

The current version of the Law fails to define criteria, which the director general and his deputies shall conform to. It is also deficient in specifying a range of pretenders and their election procedures.

A standard act, submitted by the Parliament to President for approval, stipulates a procedure of public television financing. Article 17.32.2 says that "the public broadcasting will be financed from the state budget for a certain period" (till 2010, i.e. introduction of a special subscriber's fee). Despite this, the public television will act independently, Article stresses. A question arises: is it possible that a structure created by executive body and financed from the state budget may act independently? The point is the Ministry of Finance of the Azerbaijan republic would annually allocate funds for the public television, which might be cut or raised depending on various reasons. Thus, in turn, would enable the government to interfere with its activity. In considering that direct taxes for public television functioning seem to be unrealistic so far, it is essential to create legitimate and sound principles of financing.

Under international standards, state broadcasting companies should be transformed into independent services of the public television and radio broadcasting focusing on of the CE Committee of Ministers, dealing with independence of public television and radio broadcast services, stresses the necessity of ensuring complete independence of public broadcasting companies from state and commercial interests. It says that "legal limits of public television services should clearly stipulate for their editor's independence and autonomy of organisation" by all key directions, including "editorship and publication of programs and news releases". Moreover, these rules should guarantee that bodies in charge public broadcasting and related structure will:

- be appointed publicly on the basis of pluralism principle;
- represent interests of the entire society;
- not mandated, not act on instructions of any person or body, except for the one that appointed them to comply with retroactive provisions a set forth in the law and being applied in exceptional cases;
- not be dismissed, temporarily withdrawn or replaced during term of powers, except for body that appointed them and cases where a control body has properly reaffirmed they are incapable of fulfilling their duties or faced with serious obstacles when fulfilling their duties;
- not directly or indirectly perform their functions, get wages or share

in mass media enterprises and organisations (or mass media-related sector), if it may lead to the conflict of interests due to the performance of functions in the control body.

Public television services shall be financed so that broadcasters be secured against arbitrary reducing their budget. Recommendation of the Committee of Ministers says as follows:

"Regulations for public television service organisation should be based on obligations of member countries to back and, if necessary, institute appropriate, reliable and transparent finance limits to guarantee required funds for performance of the mission of public television services".

As is seen, today's provisions of the Law of the Azerbaijan Republic "On Public Television" are adverse to the said principles and place it into dependence of executive body.

Thus, adequate changes to be made in the relevant law to secure independence of the Board of Public Broadcasting and Television and ensure freedom of television and radio broadcasters from the state. The state television and radio broadcasting company should be transformed into independent public service.

Note

The Council of Europe raised this issue during its winter session of 2004. Thus, on 27 January 2004 the PACE session discussed two reports. First of them was titled "On Functioning of Democratic Institutions in Azerbaijan". Following the discussions, 2 resolutions were adopted. The CE put forward some demands before official Baku. Under the above-mentioned report "On Functioning of Democratic Institutions in Azerbaijan", the PACE demanded from Azerbaijani authorities to fulfil obligations assumed till June 2004. These obligations are: adoption of new laws on corruption, public television, freedom of information, alternative military service, registration of legal entities and on Bar. After the approval of these laws by the Parliament but before their signing by President, they have to be submitted to the CE for expertise. Simultaneously, two separate commissions shall be jointly with the CE set up to investigate facts of infringement of human rights and election process in the country. The resolution emphasised

that should Azerbaijan fail to achieve a real progress on this track till June 2004, the PACE will be entitled to decide on annulling a mandate of the Azerbaijani Parliament delegation to the CE.

3. Freedom of information

The Law "On Mass Media" secures the right of mass media to information under the authority of state bodies, other legal entities.

Mass information media structures are entitled to get operative and reliable information about economic, political and social situation in society, activities of state bodies, municipalities, institutions, enterprises and organisations, public associations, political parties, functionaries. This right cannot be restricted except as provided in the respective legislation of the Azerbaijani Republic (Article 8).

State bodies, municipalities, institutions, enterprises and organisations, public associations, political parties and functionaries shall provide information about their activities on the basis of mass media inquiry, as well as by means of press conferences or any other form. A letter of inquiry of information will be considered in an order and terms as set forth in the legislation of the Azerbaijan Republic. If the given information loses its efficiency in the required period, an inquiry has to be responded without delay; if not possible, not later than 24 hours.

Besides, under the Law "On State Secret", citizens of the Azerbaijan Republic, enterprises, institutions organisations and bodies of executive power will be entitled to apply to appropriate structures, including state archives with inquiry on declassifying information attributive to the state secret.

Having received such an inquiry, a body of executive power, enterprise, institution or organisation, including state archives, shall within 3 months, consider it and give an answer to the point.

As is seen, the Law "State Secret" shall fix another date to consider an inquiry of citizens.

Under Article 11 of the law "On Freedom of Information", it is prohibited to demand from a person, who made an inquiry, to support

the need in information. If the information required related to the so called restricted category (Article 10), the inquiry may not be met.

Recommendation R (2002) 2 of the Committee of Ministers of the CE says that member states should secure the rights of access of each person to official documents at the disposal of bodies of state power. The given principle will be applied without any discrimination, including that of national identity.

The Azerbaijan state guarantees openness of some categories of state information resources, yet, there is great problems, both in the legislation and practice, arising from the access to these resources.

As has been noted above, the legislation provides for temporal limits of information supply. Under Article 10 of the Law of the Azerbaijan Republic "On Procedure of Consideration of Citizens' Inquiries", the information inquired shall be provided "not later than a month after the inquiry obtained". In the inquiry does not demand additional acquaintance and verification, it will be considered within 15 days. Inquiries of servicemen and their family members will also be considered not later than 15 days. If the information inquired loses its importance over this same period, the inquiry should be considered without delay, and if impossible, not later than within 24 hours. Inquiries, related to illegitimate decisions and actions of functionaries and authorised state bodies in charge of the security of law-enforcement organs and courts, are to be considered without delay.

However, a monthly term is not a deadline to give answer to an official inquiry. If an answer requires a careful verification and examination of additional materials, a head of an appropriate body organisation enterprise of his deputy may, in exceptional case, prolong the consideration of the inquiry for a month.

It is obvious that Article 10 of the Law of the Azerbaijan Republic "On procedure of Consideration of Citizens' Inquiries" admits to extend, in some cases, a period of answer presentation up to 2 months with a written notice of applicant on postponement in supplying information. The notice shall provide data on reasons of postponement, exact date of the inquiry, yet, these temporal limits seem to be unacceptable. This is

clearly revealed when comparing legislation of other European countries, for example, Sweden, where it takes just 3 days to supply an information inquired.

As positive example we have already referred to Article 8 of the Law "On mass Media", which secures journalists the rights of access to information. However, this cannot solve all the related problems, so it is still crucial for Azerbaijan to comply with the adoption of the new law on the freedom of information, under which all the citizens will be secured the right of free access to the information under the authority of state bodies.

Recommendation R (2002)2 of the CE regarding access to official documents says as follows:

"General principle of access to official documents. Member countries shall secure the right of access for everyone upon inquiry presentation to official documents under the authority of state bodies. The given principle shall be applied on equal terms for everyone despite national identity".

Note

When adjusted for gaps in legal regulation of information sphere of Azerbaijan, Baku Press Club and Association of Azerbaijan Journalists (AAJ) set up a special working group to draw up a new law in draft "On freedom of Information". Within 3 months (September-November 2003), the working group developed the draft on the basis of Recommendation of the CE Committee of Ministers of 21 February 2002 and model Law "On Freedom of Information" put forward by the organisation. In December 2003, the project went through expertise in Article 19 and with positive conclusion was submitted to an appropriate Parliamentary commission for discussion.

Under the current Law "On Freedom of Information", the information is divided into two categories depending on access and legal regime: *open information and information with restricted access.*

Open information is designed for personal and general use; search, receipt, transfer, production and dissemination of this information is not restricted by the legislation.

Access to open information will be attained through spreading in official publications, mass media means, and its supply directly to physical and legal entities.

The current legislation provides for general guarantees to obtain open information (Article 6):

- supply by bodies of executive power and municipalities of the information about their activities and decisions adopted;
- creation by bodies of state power of the information services;
- unimpeded use of statistical data, library, archives and museum stock, as well as information systems;
- immediate provision of the population with information about emergency, natural calamities and accidents, threatening the life and health of citizens;
- delivery of information about extraordinary circumstances, detrimental to the state security;
- non-admission of state censorship in mass media and press;
- acquaintance of the population with standard-legal acts in an law established order;
- Despite these guarantees, the Law "On Freedom of Information" of 1998 is of declarative nature. The point is that the Law does not regulate an order of information delivery, it just refers to the Law "On Procedure of Consideration of Citizens' Inquiries".

Also, the Law makes no provision for responsibilities of state bodies for groundless refusal from supplying information in defiance of the established standards. The Law just mentions types of information with restricted access, while other standard legal acts determine a specific list of such an information.

Under the current Law "On Freedom of Information" (Article 10), information with restricted access embraces state, professional (lawyer's, notary, medical), official, banking, commercial, statistical, investigative and judicial secrets, information about private and family life, as well as that of anti-terrorist actions.

Refusal from delivering information inquired is possible if only the latter contains data related to state, commercial or other law-protected secret. The latter include a secret of adoption, medical, lawyer's, commercial and banking secret, as well as secrets of preliminary investigation, security measures with respect of legal proceedings. If refused from delivering information, a functionary shall notify an applicant about his decision and explain, why the information inquired cannot be separated from a law-protected secret.

Thus, a person or a body refusing to deliver information will be responsible for rightfulness of his actions.

State secret

With the objective of ensuring the security of the Azerbaijan Republic, the Law "On State Secret" will regulate relations arising from the attribution of information to the state secret, its protection and use, as well as disclosure of the secrecy of such an information.

The Law says that under the state secret is meant information related to state-protected military, foreign political, economic, scientific, intelligence, counter-intelligence and investigation activities, whose dissemination may be detrimental to the security of the Azerbaijan Republic.

Measures will be taken to prevent disseminating the state secret in mass media to comply with regulations, established by an appropriate body of executive power. Approved by Presidential decree of 24 August 2002, these regulations make it incumbent upon editors-in-chief, editors, journalists (authors) of mass media structures, as founded and operating on the territory of the Azerbaijan Republic, to take measures for staving off information, attributable to the state secret.

Should a material (information) of the state secret have been disseminated in some mass media contrary to the said "Regulations", an inter-departmental commission under President of the country will be entitled, in accordance with the civil procedural code, to apply to the court with the purpose of disclosing a source that delivered this information.

Editor and journalist will be made answerable for breach of the "Regulations" for spreading the state secret in mass media.

A journalist will be made answerable for divulging the state secret as accomplice in case he realised or was to realise that information he spread presented a state secret.

An inter-departmental commission for state secret protection under President was set up on 17 January 1997 under the decree "On Applying the Law of the Azerbaijan Republic "On State Secret". The commission is collective body in charge of activities of bodies of state power in preparing and implementing state programs, standard acts and methodical documents to comply with respective legislation of the Azerbaijan Republic.

"List of information pertaining to the state secret" details about "secret" information, the divulgence of which may damage interests and security of Azerbaijan. This information relates to the military sphere, foreign policy, foreign economic relations, economy, science and technology, intelligence, counter-intelligence and investigation activity.

The said list was drawn up on the basis of Article 8 of the Law, and may be revised, if required. It refers to information pertaining to the state secret, including even export and import indices of the Azerbaijan Republic with CIS countries. Under the document, about 30 Ministries and departments are responsible for protection of the state secret. These involve the Ministries of Defence, national Security, Internal Affairs, Foreign Affairs, and Health, the State Committee for Science and Technology, National bank, Rail Department, etc. Heads of the said structures are entitled to attribute an information to the category of secret and decline from its delivery.

However, in practice it results in misunderstanding and abuse. For example, the Customs Committee of the Azerbaijan Republic has repeatedly declined from presenting necessary data on export and import of goods on the plea of alleged state secret.

As viewed by experts, major reason of conflicts between public servants and individuals, desirous of obtaining information they are interested in, is a legal base deficiency. Thus, the society is in need of a new law to effectively regulate relations in the sphere of state secret protection. Bodies of executive power, whose heads are empowered to attribute a specific information to the state secret, will

be responsible for a wide range of topics and data to be classified as secret. Contents of the information account for its being classified as secret. It is bodies of state power, enterprises, institutions and organisation owning information to decide on classifying it as secret.

Period of secrecy of the state secret information cannot exceed 30 years. As viewed by the inter-departmental commission for state secret protection under President of the Azerbaijan Republic, the period of secrecy may be extended for a term of 10 years, and in exceptional cases, in the interests of the state and nation - indefinitely. Under Recommendation R(2002)2 of the CE Committee of Ministers regarding access of member states to information, it is essential to consider a specific period of the expiry of restrictions imposed.

It has to be kept in mind that some information may be classified as secret under no circumstances. Thus, under Article 6 of the Law "On State Secret", no information may be classified as secret as follows:

- on natural disasters and emergency situations, detrimental to the health of people, on official forecasts and related results;
- on ecology, public health, sanitary, demography, education, culture and agriculture, as well as criminality;
- on privileges and compensations to citizens, functionaries, enterprises, institutions and organisations;
- on infringement of rights and freedoms of citizens;
- on the state of health of top functionaries of the Azerbaijan Republic;
- on the violation of the legislation by bodies of state power and functionaries.

However, the situation is different in practice: information legally open is sometimes inaccessible for citizens, including journalists. As a result, the society increasingly mistrusts bodies of state power. Scores of state bodies in charge of certain types of information to be delivered at special press conferences decline from fulfilling their duties. This makes it necessary to draw up a new, effective law on the state secret. The current legislation gives state functionaries a free hand to block citizens' access to official information even in areas as financial and budgetary policy of the government.

It may be concluded that despite the said recommendations of the Council of Europe, stressing maximum transparency of restrictions, the Law of the Azerbaijan Republic "On State Secret" provides ample opportunity for state functionaries to independently decide on type of information to be attributed or not to the state secret.

Thus, freedom of obtaining and disseminating information ceases to operate in matters pertaining to the national security and territorial integrity of the state, which are sometimes interpreted too arbitrarily.

In doing so, restrictions are imposed not on views and judgements but on actual information "about military, foreign political, economic, intelligence, counter-intelligence and investigation activities of the state, the dissemination of which may damage the security of the Azerbaijan Republic" (Article 3 of the Law "On State Secret").

Confidential information

Besides the state secret, the law shall protect some other types of information. Thus, medical secret and related information are secured by the Law "On Health Protection of the Population", other normative acts. Under Article 53 of the same Law, under the medical secret is implied a medical aid, diagnosis, state of health, other information arising from the results of treatment and check-up. In this connection, a person applying to medical institution will receive a guarantee of keeping the information delivered in secret.

Note that the information about notary actions, references and documents, as well as facts becoming known to notaries due to their professional activity, information about private and family life of citizens will form the notary secret. The Law "On Notary" will regulate the notary secret and related issues.

The Law "On Advocacy and Lawyer's Activity" regulates information attributable to the legal secret and related procedures. Information, consultations and references obtained, as a corollary of professional activity of lawyer constitutes the legal secret.

The current legislation does not specify a definition of the official secret and an information attributable to the official secret. Article 15 of the Law "On Public Service" makes a reservation that a citizen should vow to protect the state and official secret when starting a public service.

The Civil or Tax Codes, Law regulates questions bound up with the banking secret "On Banks and Banking Activity in the Azerbaijan Republic".

Pertaining to the banking secret is information about banking transactions of clients and correspondents, reports, deposits, encashment date, etc.

The Law "On Commercial Secret", Tax Code, and other legislative acts will regulate the commercial secret and related issues. Pertaining to the commercial secret is information arising from production, technological, managerial, financial, other business activities of physical and legal entities, and the divulgence of which without the permit of information possessor may damage legal interests of individual.

Besides, the law secures the protection of statistical secret, as set forth in the Law "On Statistics". It says that initial statistical information of legal and physical entities (private information) will be considered secret and are a statistical secret. Initial statistical information is reflective of the activity of a specific enterprise, structure or organisation, as well as physical entities.

The law also protects information, pertaining to the private and family life. A part of the information about private and family life of a person is protected as the professional secret (medical, notary, lawyer's).

The Law "On Struggle against Terrorism" regulates information about anti-terrorist actions, procedures of its obtaining and disseminating.

The law also protects the investigative and judicial secrets, as well as the secret of security measures. Pertaining to the investigative and judicial secrets is information arising from preliminary investigation or legal proceedings, the dissemination of which is contrary to the interests of trial, infringes rights and legitimate interests of participants of criminal procedure. As for the secret of security measures, applicable to judge or participants of the trial, it is protected by the Law "On State Protection of Persons Participating in the Criminal Procedure' Pursuant to this Law, measures are taken to protect life, health and property of persons, who informed about the crime, took

part in its disclosing, revealing and suppressing; victim and his representative, suspected, accused, their attorneys, witness, other participants of the criminal procedure, and their relatives, if required. Information about these persons may be classified as secret, place of work and residence, names, documents and even appearance be changes as well. Divulgence of this information entails criminal liability.

4. Defamation: protection of honour, dignity and business reputation

In Azerbaijan, journalists and mass media are brought to trial largely due to defamation cases: inevitability of protection of honour, dignity and business reputation. It has to be recalled that there is shortage of standard legal acts, regulating defamation relations between subjects of law. Current standards are notable for a great number of deficiencies and untenable. Defamation standards are mirrored in Article 46 of the Constitution of the Azerbaijan Republic, Article 23 of the Civil Code, Articles 147, 148 and 323 of the Criminal Code, Articles 10, 10-1, 44 and 45 of the Law "On Mass Media", in the Resolution of the Supreme Court of Azerbaijan "On Application by Courts of the Legislation of Protection of Honour and Dignity" (1999) and the decision of the Constitution Court of the Azerbaijan Republic "On Interpreting Articles 21 and 23 of the Civil Code" (2002). Many of the abode-mentioned Articles are to be informed and modified to bring them to the level of international standards.

Civil legal liability for defamation

As has been noted above, an overwhelming majority of legal proceedings against mass media and journalists in Azerbaijan is related to suits on protection of honour and dignity. As a whole, courts of Azerbaijan stick of legislative standards when considering these cases, which results in numerous verdicts against mass media due to deficiencies in appropriate laws proper. The probability of preconceived, debatable, legally vulnerable court decisions on cases arising from humiliation of honor and dignity is utterly high under current circumstances in Azerbaijan.

Note that uncertainties on construing such basic definitions as "honour", "dignity", "calumny", "insult", "humiliation of honour and dignity" both in the legislation and juridical literature and conducive to preconception, inadequacy of their application in law-enforcement practice.

The Constitution of the Azerbaijan Republic interprets "dignity" as an absolute value of each personality protected by the state. However, the juridical literature often defines "dignity" as self-assessment of personality (positive). In doing so, the formulation "humiliation of dignity" proves to be senseless: is it possible to humiliate value of person in his own eyes?

As for "honour", it has to be kept in mind that this definition is interpreted as reflection of properties of person (physical or legal) in public consciousness, accompanied by positive assessment. Humiliation of honour presupposes that a claimant realises changes (or thinks these changes to be potentially possible) in the attitudes of public opinion. This is a deliberate discredit of individual in public opinion. However, a comment to the Criminal Code of the Azerbaijan Republic says "it is, in the first turn, a victim to assess humiliation, its degree and intensity". The law and juridical documents are deficient in impartial, operational criteria to prove that "humiliation of honour" is on hand.

The legislation of the Azerbaijan Republic is deficient in a definition of "reputation". Applied is a definition "business reputation" as non-material right of personality (pertaining to legal entity as well), which is not specified in the Civil Code (by the way, a definition "reputation" is found in Article calumny of the Criminal Code of the Azerbaijan Republic, however, a context implies "business reputation").

A definition of business reputation relates in the juridical texts to business activity and is defined as "reflection of business properties of person in public opinion, accompanied by positive assessment of society". Strictly speaking, the business reputation may be negative as well, however, this combination is, as a rule, used in the positive sense, compare" "protection of business reputation".

Juridical texts are also deficient in the definition of "indecent form", though the very definition "insult" is based on the latter, where

"defaming" and "disgracing" information is confused, etc. A comment to the Criminal Code of the Azerbaijan Republic says: "An indecent form of discrediting a victim means that a negative assessment of his personality is presented in obviously cynical form, which runs counter an accepted manner of intercourse in society. These involve, in the first turn, obscene phrases, comparison with odious historical and literary characters".

Criminally punishable defamation

The criminal legislation defines "calumny" as "spreading of wittingly false, information defaming honour and dignity of another person or undermining his reputation, in public speech, publicly demonstrated work or mass media" (Article 147 of the Criminal Code).

The difference between civil delinquency and criminal crime is in premeditation ("deliberate").

Thus, a calumny is a humiliation of honour and dignity (or humiliation of honour and belittling of dignity), bound up with deliberate lie but not necessarily implying an incident form (unlike the insult).

Besides calumny, the legislation of the Azerbaijan specifies "insult" as punishable, defining it as "humiliation of honour and dignity of another person in an indecent form in public speech, publicly demonstrated work or mass media" (Article 148.1 of the Criminal Code).

The criminal legislation also provides for specific liability for public insult or calumny with respect to President of the Azerbaijan Republic (Article 323 of the Criminal Code).

The said Article makes reservation that "public statements criticising the head of the Azerbaijan state — President, as well as his political line, exceed the limits of this Article".

Article 323 of the Criminal Code ("Defaming or humiliating honour and dignity of the head of the head of the Azerbaijan state — President of the Azerbaijan Republic") is a gross violation of Article 25 of the Constitution of the Azerbaijan Republic ("Right to equality"), since it secures inequality between President of the Republic and other citizens.

Under Article 109 of the Constitution of the Azerbaijan Republic, President makes a presentation to Milli Majlis on appointment of judges to the Supreme Court, appoints judges to other courts of the Azerbaijan Republic. When considering cases on the insult of President, these judges violate Article 127 of the Constitution ("Independence of judges, basic principles and conditions of justice execution"). It should be noted that the Ministry of Justice, whose head is also appointed by President, is responsible for bringing suit under Article 323.

More weighty argument is the fact that this Article runs counter restrictions as specified by the international law, since it is aimed at protecting interests of political figure.

The European Court on Human Rights was considering a case (Oberschlick v. Austria), where a commentator characterised a politician, using "a strongly smearing insult". The court decided that "limits of permitted criticism is broader with respect to politician's activity than in respect to politician's activity than is respect of private person. A political figure realised that inevitably and wittingly he parades his word and deed to journalists and public opinion, therefore he should display a greater degree of tolerance".

Thus, the cited Article, directed to further toughening of criminal liability for "insult" of President of the Azerbaijan Republic, is adverse to the Constitution and generally accepted principles of international law, which secure a particular freedom of speech in respect of political statements dealing with activities of politicians. Owing to this, an inquiry on its cancellation has to be made to the Constitution Court.

Compensation for moral damage

In consequence of spreading defamatory, contrary to reality, offending honour and dignity, information and materials, a moral damage is to be compensated for through penalty (Article 21 of the Civil Code).

Under the civil legislation, a moral damage is 'physical or moral sufferings, experienced by a citizen as a result of infringement or encroachment upon his rights". A resolution of the Plenum of the Supreme Court of Azerbaijan points out that a moral damage is "moral burden experienced with spreading false information, defaming honour, dignity and reputation of a citizen..."

Except for rare cases, it is practically impossible to prove through investigation or legal proceedings the fact of moral damage. The same is true of relationship between moral burden and humiliation of honour and dignity, to say nothing of uncertainties arising from definition of "honour" and "dignity".

That's why, the sole legal way out of the situation — to stress on possible moral damage. Accordingly, a moral damage has to be compensated on the basis of probable, not realised damage. It is impossible to establish, whether a victim experienced a feeling of abasement, irritation or despair of abasement, irritation or despair due to his illegitimate dismissal, and if we are aware of his irritation, was it caused by his dismissal proper. However, the very fact of his illegitimate dismissal gives grounds to bring an action on compensation of moral damage. Another question is that such a compensation accounts for causal relationship between the dismissal and "physical or moral sufferings".

Extrapolating from the above-mentioned, it may be inferred that a separate law of defamation has to be drawn up and adopted in Azerbaijan together with annulling respective Articles of the Criminal Code to thus remove scores of legal flaws in the sphere.

Note

To solve the problem, Baku Press Club and Association of Azerbaijan Journalists "Yeni Nesil" have set up a working group to draw up a law in draft "On Defamation-Protection of Honour, Dignity and Business Reputation". Within two months (February-March 2004) members of this group developed main provisions of the future law on the basis of precedents of the European Court for Human Rights and principles set forth in Article 19. The given document, like law in draft "On Freedom of Information, was positively assessed by experts from several international organisations, following which the law in draft preparation started.

5. Regulation of mass media activity during elections

The Election Code of the Azerbaijan Republic was adopted on 27 May 2003. It determines rules of organisation and conduct of the elections of deputies to the Parliament (Milli Majlis) of the

Azerbaijan Republic, President of the Azerbaijan Republic, municipalities, as well as nation-wide referendum.

The Election Code specifies standards that regulate activities of mass media during elections.

The state provides for equal condition for all the registered candidates, political parties, blocs of political parties, propaganda groups of referendum to carry out pre-election campaign through the use of mass media.

The Election Code provides for ample opportunity and rights to mass media representatives for all-round and impartial education of the election process. However, not all the journalists will be entitled to educate the election and referendum processes in mass media. Thus, if a functionary, a journalist or a creative worker of mass media is a registered candidate, initiator of the creation of propaganda groups on the conduct of referendum or an authorised agent or a full-fledged representative of registered candidates, political parties, blocs of political parties, propaganda group on referendum, he will be prohibited to take part in educating the election (referendum) process. This rule is designed to secure objective and impartial education of the elections (referendum) in mass media.

International regulations recommend to relieve mass media from legal responsibility for spreading law-inconsistent statements of candidates and party representatives in the election campaign period, except for cases where this statement is an obvious and immediate call for violence. Parties and public speakers shall be made answerable individually for statements, adverse to the law.

The Election Code does not specify standards to reflect this provisions. Yet, under Article 62 of the Law of the Azerbaijan Republic "On Mass Media", if statements of a political figure, reports of press services of parties or statements of party leaders at press conferences are disseminated unaltered, mass media will not bear responsibility for these statements and reports. In taking into account a political nature of the election process, candidates involved in the pre-election propaganda are also considered political figures. It may be conjectured that the given legal standard has been mirrored in the legislation of Azerbaijan.

The Election Code provides for equal terms and conditions of the air both for state and private TV and radio broadcast organisation.

Under international regulations, at the first elections hold in the countries with transition democracy, governmental mass media shall provide registered parties or candidates time enough to arrange a qualitative political statement, free of charge or for nominal sum.

Under this provisions, the Election Code provides for allocation of the free air to participants of election campaign on state TV and radio channels. However, this standard is valid permanently and provided not only for transition period.

International regulations demand that mass media, when disseminating results of public opinion polls, should provide voters with all the necessary information to assess public poll importance, supply data on terms of their conduct.

These requirements are specified in Article 76 of the Election Code of the Azerbaijan Republic.

Different countries differently approach to the problem of publication of the results of public opinion polls. Many experts hold that the influence of public opinion polls on the behaviour of electorate is especially great directly before the elections. Thus, publication of the results of survey a day before the elections, foretelling a convincing victory of certain candidate, may "relax" a part of sympathisers and urge them decline from voting.

The Election Code of the Azerbaijan Republic prohibits mass media to disseminate results of public opinion polls a day before elections. This may be explained as being due to the fact that under Article 75 of the Code, no pre-election propaganda may be held on the day and before elections. Publication of the results of survey over this same period would mean illegal pre-election propaganda.

International regulations recommend to entrust an impartial body with the right to adopt decisions on legality of mass media actions, their compliance with legal standards (including prohibition on defamation, calls for violence and hatred) to consider complaints at mass media due to the conduct of pre-election propaganda.

The national code assigns a role of "impartial body" to the Central and local election commission. However, the code does not allow these bodies to adopt decisions on violation of pre-election propaganda by mass media. Article 88.8 of the Election Code stipulates that if TV-Radio broadcasting organisations and periodical publications violate rules of pre-election propaganda, an appropriate election commission on the initiative of a press-group, made of journalists and set up as set forth in the Central Election Commission regulations, will be entitled to apply to law-enforcement bodies, court and appropriate bodies of executive power to prevent illegal propaganda activity and broad and action against editorial-staffs, functionaries concerned.

As is seen from Article, the election commission is not engaged in making decisions on the said issues, it just applies to appropriate bodies. The press-group is an initiator of such an appeal. It is formed of journalists in the structure of central and district election commissions. Major duties of the press-group are to control rules of pre-election propaganda activity.

Having considered basic aspects of the Election Code, bound up with the regulation of mass media activity during the elections (referendum), it may be inferred that, except for some shortcomings, the Election Code, especially sections pertaining to mass media activity, is consistent with the CE requirements as set forth in Recommendation R (99) 15 of the Committee of Ministers.

It has to be kept in mind that when joining the CE Azerbaijan pledged to transform the state TV into the public one. In spite of the fact that international regulations, including CE Recommendation, embrace activities of not only private but public TV as well, the Election Code does not provide for public broadcasting service. The reason is that Azerbaijan has not yet adopted a law on public TV and, hence, the state TV and Radio company has not been transformed into the public service. In considering that such a law is to be adopted in 2004 and the state TV be transformed into the public one, appropriate standards of the Election Code, defining "state television" shall be modified as well.

6. Adjoining laws

Copyright and mass media

Under Article 12 of the Law "On Mass Media", the use of objects of copyright will be regulated by the Law of the Azerbaijan Republic "On Copyright and Adjoining Rights".

Among obligations as adopted by Azerbaijan when joining the CE there are no provisions regarding copyright. However, the given law is consistent with requirements of Bern convention on protection of literary and belles-lettres (Paris Act, VOIS, 24 July, 1971), World Convention on copyright (Geneva, 6 September, 1952), other conventions regulating relations on this track. The single flaw is that the Civil Code of the Azerbaijan Republic is deficient in copyright and adjoining rights, while the law refers to the Civil Code in some issues. Therefore it would be expedient to supplement the Civil Code with appropriate provisions in charge of copyright and adjoining rights.

Law on Advertisement

Adopted in October 1977, the Law "On Advertisement" regulates relations arising from production, placement and spreading of advertisement at the market of commodities, work, services of legal and physical entities of the Azerbaijan Republic. The Law also has provisions to be modified or supplemented from international standard standpoint. As a whole, the Law "On Advertisement" is directed to commercial advertisement, i.e. announcements on sales of certain kinds of products or services. Accordingly, a range of their application is in many cases restricted to this framework. Thus, political advertisement does not fall under this Law, though includes a definition of social advertisement (Article "Main Definitions" of the Law "On Advertisement", designed to serve interests of broad public.

The Law provides for numerous restrictions on advertisement contents. It is not admitted to advertise a commodity, subject to compulsory certification but having no certificate of compliance. It is not admitted to advertise a commodity, prohibited by the legislation of the Azerbaijan Republic. Under the same Law, not admitted a fair, unreliable, unethical and wittingly falls advertisement. The Law

unites them under definitions "improper advertisement" and "concealed advertisement".

It should be noted that advertisement cannot urge citizens to violence, aggression, arouse panic, incite actions capable of damaging health and safety of physical entities, infringing nature protection legislation.

It is not admitted to advertise all kinds of weapons, military technology (except for hunting and sporting arms), use pornography in advertising activity.

The Law prohibits to place advertisement defaming works of art, which are cultural property of the world and nation. As distinct from other cases, most experts are prone to admit that the Law cannot provide for such restrictions regarding ethical, not legal standards.

As a result of protracted discussions, provisions restricting advertisement of alcoholic drinks, tobacco and related products were included in the Law "On Advertisement". Note that with effect from January 2004, advertisement of the above-mentioned products have wholly been prohibited.

The legislation also pays a great attention to medicaments and methods of treatment. Regulations in this field are strictest, for example, the Law does not admit advertisement of medical preparations without the permission of appropriate body of executive power, as well as preparations containing narcotic and psychotropic substances.

Under the Law "On Advertisement", medicaments, methods of prophylaxis, diagnostics and treatment (including untraditional) of diseases, medical equipment, veterinary services and special foodstuffs may be advertised on the condition that an advertiser has a positive opinion of an appropriate body, i.e. the Ministry of Public Health. A special provision approved by Minister's order regulates procedures of such a permit obtaining. Specialists of the Ministry of Public Health shall examine the advertisement contents and if agreed, with inscriptions "advertisement permitted" indicating date, number and period of agreement. Within a specifies period, an advertiser will be entitled to place this advertisement on the territory of the Azerbaijan Republic. To compare, no additional opinion of state bodies is required in other CIS countries to advertise medicaments. An advertiser shall have a permit to produce and/or sell these medicaments.

Advertisement on radio and TV broadcasts regulations are specified in Article 12 of the Law "On Advertisement". Until recently, appropriate provisions have been included in Article 35 of the Law "On Television and Radio Broadcast" in some clauses, dealing mainly with terms of breaking off radio and TV-broadcasts to replace by advertisement, to contradict each other. On 13 January 2004, the Parliament of the country made appropriate changes in the Law "On Advertisement" and thus removed these contradictions.

However, all the issues, pertaining to the advertisement and related activity of mass media, shall be regulated to comply with the unified Law "On Advertisement". Therefore, Article 35 of the Law "On Television and Radio Broadcast" and Article 18 of the draft law "On Public Television" shall be excluded, and their provisions be included in the Law "On Advertisement".

The Law of the Azerbaijan Republic "On Advertisement" entitles persons, whose legitimate interests have been infringed due to the violation of advertisement legislation, to apply to court and demand compensation for damage. Despite broader scope and specific nature of most legislative acts in the advertisement, the regime of sanctions being applied in the event of their violation is insufficiently clear and precise.

Conclusion

Mass media obligations taken by Azerbaijan aim, in the first turn, to create favourable legal conditions to ensure pluralism in mass media of the country. Under the pluralism is meant, on the one hand, multitude of independent and autonomous mass media means having access to great number of various sources of information, means of production and distribution of produce, on the one hand, reflection in mass media of whole variety of political, social, religious and cultural views in terms of editorial independent and respect for self-regulation rules, which may be adopted by media-community on voluntary basis.

Under these obligations, a subject of legislative regulation of mass media activity in the Azerbaijan Republic are measures to ensure pluralism.

First, it is essential to take measures aimed at guaranteeing transparency of property relations and control over mass media enterprises (institutions). In considering that a definition of control is interpreted broadly in the laws and new draft laws, transparency requirements should apply not only to mass media owners and founders, but their affiliated persons, advertisers, information and communication service suppliers, etc. i.e. to all those in charge of functioning of either mass media means. These demands are laid down not so much with purpose of creating necessary conditions for exerting control over mass media concentration in the hands of certain groups and monopolisation of separate segments of the sphere, as to enable citizens to independently assess mass media reports and materials being aware of their financial, political and organizational-production ties and obligations.

Second, laws and new draft laws prepared on the basis of these obligations should provide for measures designed to prevent concentration of mass media means and ensure fair competition between them.

Third, laws and new draft laws should ensure measures directed to the protection of professional independence of editorial staffs and journalists.

All the new laws and draft laws as set forth in the legislation should be related to economic relations.

A concept of the new draft laws proceeds from the fact that these acts should form an important part of the legislation of the Azerbaijan Republic on mass media. In considering that the Law "On Mass Media" in the last wording of 16 March 2002 is designed to play a structure-shaping role in the system of the mass media legislation of the Azerbaijan Republic, the new projects should be built in pursuance of provisions as set forth in the law. Thus, new draft laws should exploit guarantees of transparency in demanding to supply information about applicant's being founder, owner, etc. of other mass media. The current legislation provides for the so called institute of professional independence of editorial staffs. However, the Law "On Mass Media" cannot and should not stipulate a detailed regulation of the entire complex of legal measures aimed at ensuring the pluralism through securing principles of economic relations in the sphere.

Beyond any doubts, a final chapter of the new draft laws should provide for certain modifications and amendments in the Law "On Mass Media", other standard acts, which is necessitated by removal of legal collisions.

The terminological base of the new draft laws is formed of definitions and definitions as set forth in the Law "On Mass Media" and current anti-monopoly legislation. Of particular importance is introduction of such definitions as enterprise (institution, corporation) of mass media and a person in charge of control. The necessity of the introduction of the first of the above-mentioned definitions comes from terminological features of the Law "On Mass Media", which defines mass media as a form of periodical dissemination of mass information, and an editorial staff as an organization in charge of mass media production and issue. A definition of editorial staff is inadequate for the law designed to regulate economic relations. The point is that subjects of different conceptual line are involved in the process, *vip.*, unitary enterprises, joint stock companies, etc. That's why it is essential to transform a definition of editorial staff into a definition of enterprise or institution depending on commercial or non-commercial nature of its activity.

A definition of person in charge of control over enterprise (institution or corporations) of mass media is made of totality of definitions "group of persons" and "affiliated persons", as formulated in other Laws of the Azerbaijan Republic. As a result, a broad definition is on hand to be applied in cases where mass media is under influence of legal and physical entities, or a functionary not only because of property relations but also on account of network agreements, other contracts or even kindred and political ties.

The use of such a broader definition makes it possible to make influence and pressure on mass media mechanisms rather transparent.

It should be noted that the new laws should specify definitions, already present in the current legislation, however, being imprecisely defined, cause difficulties in law application, for example, "broadcaster", "printed area", "air time", etc. Thus, the new laws should fill in gaps and remove collisions arising from the Law "On Mass Media" due to the introduction of the Law "On Television and Radio Broadcast".

A special emphasis in the new draft laws should be laid on standards, which provide for guarantees of editorial independents. Authors of the draft laws should secure guarantees through dividing mechanisms of financial decision-making, as well as decisions bound up with editorial policy implementation; creation of the institute of program statement; compensations for editors-in-chief and journalists in case of their dismissal. In solving a problem of mass media owner, it is essential to apply a presumption of the recognition of founder, unless otherwise provided in the constitutive documents.

The current Law "On Mass Media" enables bodies of state power and local self-government to institute their own mass media structures. The new draft laws should provide for a special legal regime for such mass media. It is obvious that state and municipal mass media should, on the one hand, provide citizens with a certain minimum of information supply (for instance, during the election campaigns to inform about state body activities, to ensure the freedom of views, etc.), on the other hand, to be independent in implementing an editorial policy, like non-governmental mass media.

State and municipal bodies, related functionaries, cannot maintain relations with non-governmental mass media. Lack of these restrictions in the current legislation opens up way for political monopolization of mass media and corruption in the area.

The new draft laws should reaffirm existing tax, customs and currency privileges for mass media. At the same time, general regulations have to be introduced to solve problems arising from privileges, donations and grants for mass media. The given regulations aim to prevent transforming state support for mass media into an instrument of political pressure and bribery.

A separate institution of confidential management of mass media is to be specified in all of the draft laws. Managing institutions and companies must play a part of "buffer" between mass media owner and editorial staff. As for state and municipal mass media, they are designed to ensure a competent management, respect for editorial independents, regard for audience opinion. As for company managers, they have been devised as means of not only protection of editorial independence but rescue of mass media from ineffective owner.

The new draft laws should provide a special standard aimed at preventing the concentration of mass media in one hands. Maximum limits are to be established for media-holdings in the process of structure formation. These limits should extend not only to owners of enterprises (institutions) of mass media, but persons with control over them.

An emphasis is to be laid on restriction of cross ownership. The question is that the construction of media-holdings is underway in the capital of Azerbaijan through concentrating printed and electronic mass media in one hands. Legislatively specified limits in this area should rule out the possibility of functioning of regions with all mass media means controlled by one and the same personality or state.

Public (municipal) service restrictions are an instrument of staying off mass media political monopolisation. Effectiveness of these standards is based on the possibility of bringing a functionary to disciplinary or criminal responsibility (for instance, exceeding of official powers or illegal involvement in business activity).

Special chapters, devoted to measures on ensuring transparency of mass media, shall provide for collection of minimum information about mass media in action. Regretfully, organisational-legal mechanisms, as set forth in the current laws, for example, the Law of the Azerbaijan Republic "On Obligatory Copy of Document", prove to be absolutely ineffective from point of view of target's .

When drawing up new draft laws, account has to be taken of recommendations of the CE Committee of Ministers regarding public broadcasting, access to information, ensuring of pluralism and transparency, other related recommendations. Legislative and legal practices of some countries of the Western Europe (Great Britain, France, Spain, Netherlands, Sweden, Finland, etc.) have also to be widely used in this process.

In considering the above-cited analysis and proposals, it may be inferred that full compliance of the Laws of the Azerbaijan Republic regarding mass media activity with European standards might be achieved in terms of conceptual approach to the issue.

GEORGIA

1. Constitutional Situation

The Constitution of Georgia was adopted by the parliament on August 24.1995. The fact is truly considered to be the crucial point in the history of Georgia, as far as aforementioned fact served as the basis for the development of political and economic spheres, as well as to the implementation of number of reforms of state importance.

The second chapter of the constitution is devoted to principle of human rights and freedoms.

It underlines the huge importance of these rights; the status of the constitution itself gives them hierarchical privilege in respect to domestic legislation and international legislative commitments.

Pursuant to article 7 of the Constitution: "The state recognizes and defends universally recognized human rights and freedoms as eternal and supreme values. The people and the state are bound by these rights and freedoms as well as by current legislation for exercise of state power."

Article 39 states, that "The Constitution does not deny other universally recognized rights, freedoms and guarantees of the individual and citizen which are not specifically stated, but are the natural outcome of the principles contained within the Constitution."

Among the fundamental human rights guaranteed by the Constitution are the following : freedom of speech; right to freely receive and disseminate information in any form; freedom of intellectual creativity and other rights and freedoms more or less connected to the independent activities of the media.

Right to freedom of speech is guaranteed by article 19 of the Constitution. It can be said, that the right was added "accidentally" to the classical, generally accepted formulation on freedom of religion.

According to article 19:

1. Every individual has the right to freedom of speech, thought, conscience, religion and belief.

2. The persecution of an individual for his thoughts, beliefs or religion is prohibited as is compulsion to express opinions about them.
3. These rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals.

Article 24 of the Constitution provides for freedom of expression:

1. Every individual has right to freely receive and disseminate information, to express and disseminate his opinion orally, in writing or in any other form.
2. Mass Media is free. Censorship is prohibited.
3. Monopolization of the mass media or the means of dissemination of information by the state or natural persons is prohibited.
4. Clauses 1 and 2 of this article can be restricted by law when conditions make it necessary to do so in order to guarantee, and by the conditions necessary in a democratic society for guarantee of state and public security, territorial integrity, prevention of crime, and the defense of rights and dignities of others, to avoid the revelation of confidentially received information or to guarantee the independence and impartiality of justice in a democratic society.

Article 23 of the Constitution guarantees freedom of intellectual creativity:

1. The freedom of intellectual creativity and intellectual property rights are guaranteed.
2. Interference in creative activity or censorship in this sphere is prohibited.
3. The prohibition of the distribution of, or seizure of creative work is not permissible, unless it violates the legal rights of other individuals.

Article 41 of the Constitution regulates some issue of positive obligations pertaining to Freedom of Information:

1. Every citizen has the right, according to the law, to know information about himself which exists in state institutions as well as official records existing there, except for information containing state, professional or commercial secrets.

2. Information existing in official papers connected to health, finances or other private matters of an individual are not available to other individuals without the prior consent of the effected individual, except in cases determined by law, when it is necessary for the state and public security, defense or health, rights and freedoms of others.

Analysis of the aforementioned constitutional provisions gives bases to assert, that they completely meet requirements of modern pluralistic democracy.

At the same time, Georgian legislation regulating activities of mass media do not completely reflect recognized constitutional principles, and often even contradict to them.

2. Legislation on Mass Media

The basic legislative act in the sphere of Mass-Media is the Georgian law "on press and other mass media" adopted on August 10.1991.

The law was adopted on the dawn of post communist era and contains a lot of attributes from the past legislation. It contains set of provisions of declaration character lacking in reality legal norms, which unfortunately do not form legal mechanisms for the realization of rights guaranteed by the law itself.

Besides, the law which has a great influence of soviet legislative culture, is already outmoded.

Number of provisions regulate issues, such as establishment and functioning of Mass Media, relationships between editor, editorial staff and a founder, activities of foreign journalist in Georgia and so on.

The best example of the of the anachronism of the law is a provision of article 17- "certain organizations or groups of persons can establish independent enterprises on profitable bases and on the bases of contract disseminate any periodical publications. All the aforementioned enterprises are subject to special registration pursuant to the rules established by law."

"Circulation of the printed edition is defined by the founder".

"The president is entitled to increase or curtail the circulation of any periodical being on subsidy".

It is evident, that after adoption of fundamental laws, with principles of market economy, similar norms became unnecessary.

Georgian legislation does not contain special requirements for the registration of means of mass media. The general rule on registration envisaged by the law on "entrepreneurship" of Georgia applies to them. Therefore, according to the article 7 of the "Law on press and other mass media":

1. Mass Media implement their activities only after registration;
2. Registration procedures are regulated by the Georgian Law on "Entrepreneurship";
3. If for some reason means of mass media stop functioning for one year, re-registration is necessary.

The disputes are going on whether the paragraph 1 of the article comes into conformity with the Constitution. as far as the state should not restrict dissemination of information by any procedures, including introduction of permissions or registration. Actually, the norm is an anomaly. It also contradicts to the law "on entrepreneurship", according to which an entrepreneur is registered before initiation of its commercial activities and its specific directions do not require farther separate registration.

It is difficult to imagine, where the publisher, planning to issue a new newspaper should register it. Especially, that Georgian legislation does not identify the separate organ, directly responsible for the registration of mass-media. If registration of certain mass media is not necessary, than its re-registration is also not necessary, irrespective of for what period was its activity terminated.

However, frankly speaking, media did not have problems in regard to application of the norm in practice, as far as its implementation is practically impossible and therefore nobody pays on it attention.

"Only court has authority" for the complete termination of mass media activities, pursuant to law.

However, the law does not determine who is entitled to apply to court with requirement to prohibit mass media activities. When case concerns to creation of danger to territorial integrity or public security, public person can not address the court with corresponding charges. (pursuant to Georgian legislation it is the issue of public charge). On the other hand non of the state body has such authority. And the last one, the most important, it is difficult to find corresponding legal procedures for its realization.

One of the rights of mass-media provided for in the law also deserves attention- "to send the journalist in state organs and public organizations, which are obliged to provide a journalist with working conditions. It is a bit unclear how is it possible to oblige public organizations and besides, what is meant under the wording "provide journalists with working conditions"?! There is no doubt, that state organs should not interfere in performance of journalists' professional duties, however the obligation connected to the creation of working conditions is a bit strange. (Freedom of expression in Georgia, Zurab Adeishvili p. 288-290. British council Georgia. GIPA)

It is necessary to pay attention on the one norm of the law, regulating a question of confidentiality of a source of information and establishing mechanisms for its protection. Pursuant to the norm, the journalist is obliged to satisfy the request of the person delivering him the information on confidentiality of a source of information. Realization of the requirement in practice is sometimes doubtful. According to Criminal Procedures' Code "the court is authorized to release a journalist from the obligation of witness, if they have promised not to disclose the source of received information." Thus the court solves whether to grant a journalist aforementioned right or not. However, the Criminal Procedures' Code does not specify criteria on the bases of which the journalist can be granted the right. It is also unclear, how journalist will prove, that he/she has undertaken obligation before the source of information on the protection of its confidentiality. Criminal Code was adopted later, therefore, in case of collision, the Code would be applied for. It can create significant barriers to the realization of right in regard to securing confidentiality of information.

European legislative standards regulate quite clearly issues on the confidentiality of a source. Pursuant to the recommendation of the

Committee of Ministers of the European Council on "The right of journalists not to disclose source of information":

"the protection of journalists' sources of information constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media;

The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that:

i. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

ii. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, bearing in mind that:

- an overriding requirement of the need for disclosure is proved,
- the circumstances are of a sufficiently vital and serious nature,
- the necessity of the disclosure is identified as responding to a pressing social need, and
- member states enjoy a certain margin of appreciation in assessing this need, but this margin goes hand in hand with the supervision by the European Court of Human Rights.

c. The above requirements should be applied at all stages of any proceedings where the right of non-disclosure might be invoked.

Case law of the European Court also recommends non disclosure of the sources of information. Its is proved by the judgment of the European Court on the case "Goodwin v. United Kingdom".

As to the facts, Journalist William Goodwin was telephoned and the source gave him information about Tetra Ltd ("Tetra"), to the effect that the company was in the process of raising a great amount of loan for solving its financial problems. The information was unsolicited and was not given in exchange for any payment.

The journalist while preparation of articles on the issue, applied for a comment to the official representative of the company.

Simultaneously, the company has discovered that "strictly confidential" documents, containing aforementioned information, have dis-

appeared. "Tetra" applied to court and requested to prohibit publication of the information. The national court satisfied the demand. Afterwards the company applied to the court again and demanded from the journalist to disclose the identity of the source of information. They stated, that it would facilitate to the identification of a careless employer. When the journalist refused to disclose the source of information, the court fined him for "the contempt of the court".

Goodwin appealed the case in Strasbourg court, as far as he considered, that judgment of the Court of Great Britain in regard to disclosure of the source of information and fine sanction violated his right to freedom of expression.

The European Court stated the importance of freedom of expression in a democratic country and declared, that "Protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the laws and the professional codes of conduct in a number of Contracting States and is affirmed in several international instruments on journalistic freedoms. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. "

The European Court held, that the degree of interference applied for by the Court of the Great Britain , was violation of the article 10 of the European Convention: "Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 (art. 10) unless it is justified by an overriding requirement in the public interest.

Georgia is a party to European Convention on the protection of Human Rights and freedoms, and therefore, Georgian courts while applying to the article 10 of the Convention on the freedom of expression, are obliged to interpret it in compliance with the case law of the European Court.

One of the paragraphs of the article of the law on "press and other means of mass media", which obliges the journalist to "check the truth of the obtained information" create significant difficulties in practice. As a rule, the aforementioned norm is considered by the Georgian Courts as an absolute provision, which in itself is an incorrect approach.

Pursuant to international practice, the journalist is obliged to check the information obtained in reasonable frames, or on the one hand its necessity and on the other its possibility is specified. News is a "perishable product" and its value and interest would "nullify" the source of its publication at least temporarily. That is why journalists are obliged to recheck the news only in reasonable frames, and impose responsibility for the accuracy of information only from that point of view.

If the journalist sincerely believed, that the information corresponded to the truth, he/she can not be accused for the intentional defamation.

All the aforementioned is only a short list of those problems, which need to be solved and which oblige Georgian state to take care on the development of legislation, regulating activities of mass media on a timely bases. Especially since, law in force on "Press and other Mass Media" alteration of which became the argent issues practically simultaneously with its adoption, does not provide legislative guarantees for the realization of independent activities of Mass Media.

It was motivation of NGOs, which in 2002 elaborated draft on "Freedom of Press and Speech".

Various public organizations have developed at once several drafts, which afterwards have been compared and the final, negotiated version has been submitted before the executive and legislative branches for consideration.

Hearing of the draft was included in the agenda of the parliament several times, however it is not approved yet.

Nevertheless, events taking place in Georgia recently give bases to assume, that the situation will change, and the draft, which has received approval of both Georgian and European experts would be

adopted in the nearest future. By its adoption, the law in force on "Press and other means of mass media" loses its force.

The draft on "Freedom of Press and Speech" which differs significantly from its predecessor, gives media opportunity to implement the function of a "watch-dog" freely and effectively.

Terms "opinion", "defamation", "public interest" and as well as others given in article 1 of the draft completely conform with the commitments of Georgia undertaken by international instruments and facilitates to the application of law in practice.

The article 2 of the draft directly requires application of the article 10 of the European Convention of Human Rights and jurisprudence of the European Court while interpretation, which is a precondition for the progressive understanding of the law.

According to the draft, freedom of speech and press includes following human rights :

- 1 Right to possess and express one's own beliefs;
2. The right to search, receive, create, store, process and disseminate information and ideas;
3. The right to remain silent;
4. The right to remain anonymous.

Article 5.4 of the draft is of a great importance: "Any reasonable doubt during dispute about assignment of status opinion or fact to a statement should be interpreted in favor of assignment of status of opinion."

Judicial practice demonstrates, that separation of an opinion and a fact are frequently connected to complexities. Aforementioned norm, will undoubtedly render positive influence on the decision of similar disputable issues, that are extremely urgent from the point of view of media activities.

Reasons for restricting freedom of speech and press, stipulated in this law also comply with democratic standards. Therefore a law, which restricts rights should be

1. In accordance with legitimate goals;

2. Critically essential for existence of democratic society;
3. Non-discriminatory;
4. Proportional.

In comparison with legislation in force, the draft forbids licensing, registration or any other permissions for the application of freedom of speech and press.

The draft also contains articles, pertaining to professional independence and self-regulation of media, which serve for the effective protection of journalistic rights.

One of the innovations offered by the draft is alternation of punishment measures on defamation. The draft envisages abolition of the article 148 of the Criminal Code, which pertain to criminal liability for defamation. Instead of it civil responsibility has been introduced, which is differentiated in case of defamation of private person and a public person.

Therefore, "the person bears civil responsibility for defamation of a private person, if the plaintiff proves before the court, that the statement contains substantially false facts concerning the plaintiff and defamatory statement and fault of respondent has actually caused him/her damage." Therefore, a persons can be liable for defamation in presence of two conditions- facts specified in a statement, which can either be proved or denied and direct intent of a respondent to cause damage by the dissemination of information.

Naturally, the discussed draft can not be considered as the best one at this stage, number of its provisions need both editorial and contextual development.

3. Responsibility for Defamation and Insult

Freedom of expression does not fall within the category of absolute rights and can be restricted under certain conditions including for the protection of rights and freedoms and reputation of other persons.

Therefore, politicians and public officials quite often motivate with protection of rights and reputations in order to evade criticism.

As its was already mentioned, the current legislation of Georgia envisage both civil and Criminal responsibility for defamation and insult.

Pursuant to the article 18 of the Civil Code: "A persons is entitled to demand in court the retraction of information that defames his honor, dignity, privacy, personal inviolability or business reputation unless the person who has disseminated such information can prove that it corresponds to the true state of affairs."

The same rule applies to the incomplete dissemination of facts, if such dissemination defames the honor, dignity or business reputation of a person.

"If the information defaming the honor, dignity, business reputation or private life of a persons has been disseminated in the mass media, then it must be retracted in the same media. If such information is contained in a document issued by an organization, then this document must be corrected and the concerned parties must be informed of the correction."-states article 18.

Therefore, a person whose honor and dignity has been defamed by the information disseminated in mass media, she/he is entitled to disseminate information in answer to the defamation through the same media of information. The protection of the good referred to in this article shall be exercised regardless of the culpability of the wrongdoer. And if the violation has been caused by culpable action, a persons may claim damages (compensation for harm). Moreover, "Moral damages may be recovered independently from the recovery of property damages."

According to the article 19: "the right referred to in article 18 may be exercised by a person who, although no bearer of the name or the right to personal dignity himself, nevertheless has an interest (in it) deserving protection. " He may exercise the right to demand such protection of the name and dignity which determines the essence of the person and continues to exist as well after death. However in the last case, it shall not be allowed to claim compensation for moral damage.

Provision of article 18 on resting the burden of proof only on the disseminator of the information is quite controversial. The norm creates significant problems in respect to realization of right on freedom of speech, especially when the case deals with the dissemination of information on public persons.

In similar cases, in majority of democratic countries, the burden of proof, as a rule, rests not on the disseminator of the information, but on the public person, that gives journalists great freedom of action in dissemination of information on significant persons for a society.

Criminal liability for defamation is envisaged by the article 148 of the Criminal Code, pursuant to it: "Defamation that contains acquisition in crime is punishable by fine or by community service extending from one hundred to two hundred hours or by correctional labor for up to one year in length."

In certain cases the code envisages criminal liability on insult.

Therefore, according to the article 366 "Contempt of court involving insult to a participant of the process, - shall be punishable by fine or by community service from one hundred and eighty to two hundred and forty hours in length or by arrest from two to four months. The same action involving insult to a member of the Constitutional Court, judge or jury, - shall be punishable by fine or by correctional labor from one to two years in length or by arrest from three to six months."

In our opinion, along to application of articles of Criminal Code and Civil Code, when dealing with the issue of liability on defamation and insult, Georgian court should also apply to European case law, which pays significant attention on the protection of right to freedom of expression.

One of the obvious case of the aforementioned is the case "Lingens v. Austria", where the Strasbourg court, by taking into account the principle of proportionality, held that freedom of speech and press is more important than protection of reputation of high official. In October 1975, after the Austrian general elections, the journalist Lingens editor of the journal, published two articles criticizing Mr. Bruno Kreisky, the retiring Chancellor and President of the Austrian

Socialist Party who won in elections. Lingens accused Mr. Kreisky in protection for political reasons of the President of the Austrian Liberal Party, who served in the first SS infantry brigade during the Second World War, and in having liberal relationships with the former Nazi.

Lingens also criticized Kreisky for assault of Mr. Simon Wiesenthal - the president of the Jewish documentation, who publicly denounced the past of the head of liberal party. The behavior of the chancellor was considered as "immoral" and "dishonest".

The Austrian court after studying the private complaint of the chancellor, considered the aforementioned statements as "assaulting" and sentenced the journalist to fine. The court stated, that Lingens could not prove the truth of his indictments.

After studying the case, the European court held, that position of the national courts was indirect, as far as "the truth of value judgment is not susceptible of proof."

In its judgment the European Court emphasized importance of the freedom of press in political debates: "These principles/ freedoms of expression/ are of particular importance as far as the press is concerned. Whilst the press must not overstep the bounds set, inter alia, for the "protection of the reputation of others", it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them."

The court mentioned, that the "limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large."

In Case "Hendryside v. the United Kingdom" the European Court stated, that "Freedom of expression is one basis of the democratic society and one of the fundamental conditions for its progress and self-realization of its each member."

Subject to paragraph 2 (art. 10-2), it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffen-

sive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

The European court considers, that even than, when the punishment only envisaged insignificant fine, the fact itself can play the role of internal censorship.

In the Majority of judgments made by the European Courts in which national courts imposed fines on journalists for the defamation and insult, it was stated, that "in the context of political discussions the aforementioned judgment may deter journalists from participation in public discussion of the problems. Moreover, similar sanctions, may hinder the press from fulfillment of its functions pertaining to realization of its duties concerning supplier of information and "watchdog" of the society."

According to the principle of the case law of the Strasbourg Court, any domestic legislation, which protects politicians and high officials (the president, Prime Minister, members of the government and parliament etc.) from defamation and assault and envisage special or more strict measures of punishment are inconsistent with the article 10 of the European Convention.

It should be mentioned, that great majority of developed states have refrained from the criminal responsibility on defamation and assault. Pending amendments in Georgian legislation suggest smooth way to the resolution of the issue (see above comments to the draft on "Freedom of speech and press")

4. Regulation of Broadcasting Sphere

Regulation of the broadcasting sphere is one of the main mechanisms for the regulation of media activities.

Broadcasting issues in Georgia are regulated by the law on "post and communication", which was adopted in 1994 and processed significantly in 1999. Adoption of the law even that time was considered as a temporary measure, which is proved by the article 55 paragraph 12, according to which, the parliament of Georgia was obliged to adopt a law on "broadcasting" within a year since the law entered into

force. Already five years passed, however, the law "on broadcasting" does not exist yet.

It will be correct to assert, that the questions connected to licensing in broadcasting sphere are regulated by law on "post and communication" pursuant to democratic principles; however number of provisions, including licensing does not comply with the European standards.

Namely, Pursuant to the article 22 of the law: "The Commission/national regulatory organ in the broadcasting sector/is comprised of three members, which are appointed for six years term and dismissed by a president."

The given provision, naturally, contradicts to the principle of independence of a member of the commission, which frequently play decisive role during performance of its duties by a commission.

The issue of dependence of the commission on the president was clearly demonstrated in the process of issuing a license on the frequency earlier used by the channel ORT. One of the participants of a tender, which lasted for several years, was the leader in Georgian broadcasting sector-TV company "Rustavi 2". The channel manifestly opposed to the government of Eduard Shevardnadze.

On one of the last sessions of the commission, when the issue of granting the aforementioned license was being discussed, the chairman — Vakhtang Abashidze declared on the coercion infliction upon him from the side of the president and refused to sum up the results.

After the "Rosy Revolution", TV company "Rustavi 2" became the license holder on the aforementioned frequency for the period of 10 years.

The law on "Post and Communication" did not solve the main problem — transformation of the State TV-radio corporation into a public service broadcaster. Moreover, the law envisages benefits for legal persons of public law established on the bases of state property. Therefore, pursuant to the article 42.1 "Those TV and radio broadcasters which were established before enactment of the law on broadcasting, by the state authority or by the legal persons of public law

on the basis of state property are not subject to licensing. On the basis of presented application the commission grants to the aforementioned organs, persons who are obliged to follow to the requirement established by law on broadcasting, frequencies that were utilized by them in the moment of enacting the law. "

Presented examples demonstrate, that the law in force does not provide regulation of broadcasting sphere in a sufficient manner and thus a new law has to be adopted.

Law drafting has been going on for already two years. The draft on "broadcasting" was elaborated by the assistance of British experts, and it practically reflects all requirements of the European Convention on trans frontier broadcasting , as well as resolution of the committee of ministers of the European Council , pertaining to the regulation of broadcasting sphere.

The Committee of Ministers in its resolution(2000)23 expects the state to:

- establish (if they have not performed so till now) independent regulatory body in the broadcasting sphere;
- form regulatory bodies in such a way, as to provide maximum level of protection from any kind of political or economic interference;
- include in domestic legislation and programs provisions, which would have provided the regulatory organs with the opportunity to implement their functions effectively , independently and transparently;
- identify clearly by the legislation rights and obligations of regulatory bodies, issues of funding and reporting;
- provide specifically in the legislation procedures and criteria for issuance, continuation and termination of license on broadcasting;
- oblige the regulatory body to inform the public in respect to competitions on the issuance of license. Information would contain conditions for conducting competition and other necessary requirements for the participation therein. (technical, financial and program aspects).

The draft on broadcasting meets all the aforesaid requirements.

Pursuant to the draft, an independent, regulatory body- the Georgian National Communications' Commission- shall be established.

Members of the commission are appointed by the parliament with secret ballot, by the majority of votes. The president of Georgia shall appoint one of the 5 commissioners on the position of a chairman of the commission. Financial independence of the commission is guaranteed by the procedures of funding envisaged by law, according to which, the budget of the commission is made of the license fees and annual regulation fee.

Financial audit of the expenses and financial reports of the commission, pursuant to the draft, is implemented by an auditor, which is selected through the tender and the commission covers audit expenses from its own budget.

Generally, norms of the draft concerning commissioners' obligations are so formulated, that on the one hand the commission has opportunity to freely carry out activities within the framework of its competence and on the other hand their independence is guaranteed and they are free from any kind of interference.

The draft stipulates precisely issues in respect to licensing. Namely, at least two months prior to the commencement date of the open competition, the Commission would publish the information on the open competition. The project lists all necessary requirements in order to meet application; the basis for refusal on the issuance of a license and so on.

For better implementation of broadcasting regulation function, the commission shall, in consultations with license holders, public and other competent experts draw up and pass a Code of Conduct of License Holders, on the bases of this law and through public administrative process. The Code shall deal with matters and set standards in following spheres:

- Program accuracy, fairness and impartiality;
- Impartial coverage of election campaigns;
- Privacy;
- Freedom of religion;
- Protection of the rights of minorities;
- Protection of the interests and rights of children;
- Sex and Violence;
- Advertising, sponsorship and other issues

The draft provides for the right to correction and retraction. Therefore, within 10 days after initial statement was made, an interested person is entitled to request correction of publication with equal means and forms in order to make retraction or correction of facts in same length and approximately in the same time period as the initial statement.

The project envisages number of mechanisms for the protection of public interests. Namely, the draft introduces the institute of "Public Service Broadcaster". Public service broadcaster (supposedly the number would not exceed 5), would cover at least 75 % of the population. Terrestrial broadcasting license holder within its service area will provide sufficient diversity to broadcast the matters of public concerns of the entire society or its particular part, it should cover the pluralism of opinions existed in the public; discrimination of any group or public is prohibited.

The draft sets some program limitations. Namely, any type of war propaganda is prohibited, broadcasting of programs containing of incite to ethnic or religious hatred, or are of discriminatory nature, present danger of stirring up violence are considered inadmissible.

Broadcasting license holder, shall avoid broadcasting of "programs which contain clear and present danger of stirring up hatred, discrimination, or offending any person or group on the basis of ethnic background, religion, opinion, age, gender, sexual preference or disability, or any other feature or status, or special emphasis of these features or statuses, unless it is within the context of the programs and aims mere illustration of hatred, hate and discrimination already existed in the society. "

Public TV

Chapter 5 of the draft on "broadcasting" applies to public service broadcaster.

The Public service broadcaster, being the important factor in development of truly democratic society, plays decisive role for the countries with transitional democracy, including Georgia, where problems in regard to maintenance of pluralism, freedom of expression and information have not been completely solved yet.

In current situation only the public TV can be rather independent, naturally under condition of having effective guarantees, in comparison with the state TV, which for its specificity can hardly avoid interference of state governing bodies, parties in power and in comparison with a private TV, which can be subject to influence of commercial interest.

It is necessary to note, that formation of public TV in Georgia is one of the specific requirements of the European Council, recommending to refrain from the practice of state broadcasting and to introduce public broadcasting already by the end of 2005.

The new draft completely prohibits functioning of either state broadcaster, or a broadcaster established by the bodies of local government or self-government.

The main state broadcaster of Georgia-State TV and Radio Corporation of Georgia (The first and Second Channels) will be transformed into a public TV, which will inherit all assets and liabilities of the state TV.

As far as, pursuant to the draft, public service broadcaster should be the only one, the rest of TV companies based on state or local property (regional) would be transferred either in private companies or abolished.

Therefore, according to the presented draft, "public broadcaster is a legal entity of public law, established for TV-radio broadcasting, based on public financing according to the Georgian Legislation, independent from the state, accountable to the public."

Public service broadcaster should be transparent for the society, ensure editorial independence, fairness and justice; impartiality and variety of programs.

The law establishes on the one hand protection mechanisms of public service broadcaster and its governing bodies from intervention in the activities from outside and on the other hand-their accountability before the law and the society .

The governing bodies of the public service broadcaster are board of governors and a general director, in relation to which rather high criterion of absence of conflict of interest is established. (Candidates of governors are selected by means of open competition). The parliament of Georgia appoints the governor, which is nominated by a president. Only the parliament and the president are authorized to dismiss a governor before expiration of the term envisaged by law. (Pursuant to procedures prescribed by law).

The law envisaged introduction of the institute of an auditor of public broadcaster appointed by the general director. The auditor conducts internal audit of the public service broadcaster. The board of governors also appoints an independent auditor through open competition for conducting internal audit of public broadcaster.

The board of governors defines program priorities of public service broadcaster, its charter and budget. The board of governors should report on a regular bases to the Georgian Parliament, the president and the national commission of communication and publish the report on its activities.

Meanwhile, number of issues, pertaining to the formation of public TV, still remain unsolved. One of the most painful of them, deals with sources of funding, which would become one of the major guarantees of its independence.

Pursuant to the final version of the draft, the sources of funding public service broadcaster are "targeted funding of the state budget and other sources determined by the legislation". The concept, "other sources" means grants and other donations, since other commercial incomes, including commercial advertisement are prohibited by the draft.

Actually it turns out, that the main source of incomes is the state budget. Number of experts engaged in the elaboration of the draft do not agree with the issue. They state, that in such a case television can not be completely independent. Currently alternative versions of funding public TV are being discussed, one of which is transmission in the budget of public TV of the fixed percent from one of the taxes- not new, but from the list of those already being in force in Georgia. It should be mentioned, that aforementioned version has already been suggested at the early stages of draft discussions, however representatives of the former government did not support it.

As it has already been marked, according to the draft the public service broadcaster may not carry commercial teleshopping and advertisement, only electoral and social advertisements are allowed. The broadcaster shall allocate free of charge at least 1 minutes per-hour for social advertisement. Thus "public service broadcaster during election campaign is obliged to inform public as a social advertisement about candidates and parties participating in election and procedural issues for voters during election campaigns. Information must be accurate and shall include addresses and polling places, date of elections; procedural rights and obligations of voters."

Requirements concerning election advertisement is common for all broadcasters: "Universal terrestrial broadcasting license holder, also those broadcasting license holders who broadcast electoral advertisement, shall broadcast electoral advertisement within its service area during election campaign free of charge for no more than two minutes per hour. Electoral advertisement time shall be equally available to all election subjects which overcome at least one threshold during the last 2 electoral processes".

Broadcasting of commercial electoral advertisement, including public TV, is not stipulated by the draft. The issue is regulated by the Election Code, and majority of the working group think, that the issue needs specification in regard to public TV.

5. Access to Information

In 1995, after adoption of the constitution, discussions were initiated on the formation of legislation, which would have guaranteed free access to information. Debates, which lasted for four years, logically ended by the adoption of the General Administrative Code.

Pursuant to the Code, everyone may request public information from administrative agencies as well as receive its copy if it does not contain state, professional, commercial and private secret.

Chapter 3 of the Administrative Code regulates rules of receiving public information from administrative agencies, as well as acquisition of its copy.

Generally, "Everyone may request public information irrespective of its physical form or its condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information. If there is a danger of damaging the original, a public agency shall provide access to the original under supervision or provide a duly certified copy of the document."

In order to obtain public information, a person shall submit a written request. The application shall not be required to specify grounds or purpose for requesting the information. When seeking to obtain personal data of another person or commercial secret, the applicant shall also submit a written consent of the information subject, certified by a notary or an administrative agency.

The Code provides for 4 types of information, which is considered to be secret:

- private secret
- commercial secret
- professional secret
- state secret.

The issue of considering information as private secret is decided by a person itself, except cases prescribed by law.

Commercial secret means "any information concerning plan, formula, process, or means that constitute a commercial value, or any other information that is used to produce, prepare, or reproduce goods, or provide service, and/or which represents an innovation or a significant technical accomplishment, or any other information, disclosure of which could reasonable be expected to cause competitive harm to a person."

Professional secret means "any information that constitutes personal or commercial secret of a person or organization, which became known to another person in the course of execution of his professional duties. No information that does not constitute personal or commercial secret of a person or organization shall be considered a professional secret." The concept of the state secret is provided for by law on "state secret". The state secret means any information containing state secret in the sphere of defense, economy, internal affairs,

intelligence, state security and protection of state order, dissemination or loss of which will damage sovereignty, constitutional order and political and economic interests of Georgia; information which is recognized by the law as state secret and is subject to state protection."

Article 31 of the Administrative Code regulates terms within which information should be kept secret: "Unless otherwise prescribed by applicable legislation, professional and commercial information shall be kept classified for an unlimited term. Commercial secret shall be declared open if the grounds for classifying such information can no longer be invoked. Personal secret shall be classified within lifetime of the information subject, unless otherwise prescribed by applicable legislation."

Pursuant to Administrative Code, the session conducted by any corporate public agency shall be open and public . Moreover, "A corporate public agency shall a week ahead publicly announce about forthcoming meeting, including its place, time and agenda. The agency shall also publicly announce its decision to close such meeting, if applicable."

As for the terms of releasing public information, it is considered to be the only provision regulated by the code, which causes dissatisfaction of Georgian society and NGO sector.

Pursuant to article 40 : "A public agency shall release public information immediately, or not later than ten days if responding to a request for public information requires:

1. acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information"
2. acquisition and processing of separate and large documents that are not interrelated, or
3. Consultation with its subdivision, that operates in another area, or with another public agency.

According to experts' opinion 10 days period for the submission of information is unjustifiably long, and should be restricted up to maximum 48 hours, or two working days.

If access to public information was denied, the agency shall provide the applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions and public agencies, which provided their suggestions regarding the decision.

Pursuant to the article 47 of the Code:

A person may file a claim in a court demanding the nullification or amendment of the decision of a public agency or public servant, and claim material or non-material damages for:

1. denying access to public information, partly or completely closing the session of a corporate public agency, or designating public information to be classified
2. creation and processing of incorrect public information
3. the illegal collection, processing, storage and dissemination of personal data, or illegal furnishing of personal data to another person or public agency.

In case of violation of the chapter three by a public agency or public servant. The burden of proof shall rest with the public agency or public servant that acts as defendant in a court.

The Code regulates such issues as: rules for processing of personal data, secrecy of personal data; request of secret information by a court, reporting by public agencies.

After the analysis of the chapter III of the General Administrative Code, it should be concluded, that envisaged legislative norms completely constitute to the European standards, namely to the resolution #2(2002) of the Committee of Ministers of the European council in respect to access to official documentation.

Meanwhile, awareness raising of the population at large in respect to mechanisms provided for by law, still remain a problem, which doubts its effectiveness.

For several years-practically since adoption of the Code, national NGOs are working actively on its social implementation. It is worth to mention, that pursuant to the aforementioned resolution, of the

Committee of Ministers, not NGOs but state agencies are obliged to "inform the society on their right to access to official documentation, and on the mechanisms of its realizations, as well as to provide adequate training of public officials in respect to their obligations for the realization of the right."

6. Media and Elections

Mass media has strong and often even decisive influence on the process of election campaign, and therefore, in that period it falls within the sphere of great interest from the side of political forces.

"In the process of covering election campaign media should follow and protect principle of equality. "

As far as Georgia has not yet adopted the Code of Journalistic Ethics and the organ of self-regulation of media, which would have balanced participation of printing and broadcasting mass media is still nonexistent, the necessity of detailed regulation of the issue on the legislative level has arisen in order to avoid fatal mistakes.

In Georgia Election Code regulates issues of covering pre-election, process of election campaign by mass media, as well as election advertisement.

Pursuant to the article 72 of the Code: "Representatives of the press and other mass media, accredited at the relevant election commission, have the right to attend election commission sessions and to be present in the polling place on Election Day. Accreditation of representatives of the press and other mass media operating on the territory of several election districts shall be implemented by the Secretary of the CEC or by the Secretaries of the appropriate DEC, while accreditation of the mass media representatives operating on the territory of one election district, by the Secretary of the appropriate DEC. Applications on accreditation of representatives of the press and other mass media are submitted to the relevant election commission, no later than 10 days prior to Election Day."

Election documents are accessible to all persons. An election commission is obliged to provide all interested persons with the election documents and information on elections, within 2 weeks of being requested, and in case of a request for copies, the relevant election commission may establish a fee in reasonable frames.

The election commission session shall be open. The right to attend the election commission session shall be given to any interested party, including mass media.

Pursuant to article 73 paragraph 13: " Public TV companies and radio broadcasters shall provide two hours of their airtime on daily television and radio free of charge, for election campaign and political advertising purposes for at least the last 15 days prior to election day. Those airtime hours shall be equally distributed among the election subjects"

Pursuant to the paragraph 14 of the same article, " Beginning from the 50th day prior to election day until the approval of the final election results by the CEC, both public and private TV companies shall abide by the following terms:

a) If allocating air time for election campaigning and political advertising, the TV and radio companies must announce publicly and submit to the CEC the following information: the start and end date and frequency of the allocated air time; duration and timetable of the allocated daily air time; the air time tariff;

b) Paid airtime allocated by a TV or radio broadcaster shall not exceed 15 % of the total daily broadcasting time per day; no election subject shall be allocated more than one-third of this time;

c) Paid daily air time shall be equally allocated among the election subjects;

d) The air time tariff shall be the same for all election subjects;

e) When broadcasting political advertising via TV, the screen corner shall display the inscription "Paid political advertising" or "Free political advertising";

f) For the period provided for in this paragraph, no election campaign statements and placement of political advertisement, may be made other than at the times and space allocated for this purpose.

According to paragraph 15: The day after the expiration of the term for election registration of parties and election blocs, newspapers, other than the newspapers of political parties, shall abide by the following terms:

a) If allocating newspaper space for election campaigning and political advertising, the newspaper must publish in its newspaper and

also provide to the CEC the following information: the start and end date and frequency of the allocated newspaper space; the size of space allocated in one newspaper issue; if providing newspaper space free of charge, how much of the total allocated space is being provided free-of-charge; the space tariff;

b) No election subject shall be allocated more than one-third of the newspaper space in one newspaper issue or over a period of one week;

c) The paid space allocated in the newspaper in one issue or over the period of one week shall be equally distributed among all the election subjects;

d) The space tariff shall be the same for all election subjects;

e) When publishing a campaign article or political advertising, above the heading of the article and in the corner of the advertisement, shall be made the inscription "Paid political advertising" or "Free political advertising";

f) Must not publish election campaign materials and political advertising which violate the provisions of this paragraph during the period stated herein.

Generally, Georgian legislation regarding participation of Mass Media in election procedures complies with European Standards. However in real practice, during elections, media frequently faced difficulties for some decisions of the Central Election Commission.

In itself, the issue of regulating additional procedures by the CEC according to the rules provided for by law is not disputable. The frames within which these regulations are undertaken play here the decisive importance. Frequently CEC misuses its authorities in respect to aforementioned.

The decree #8 of August 25, 2003 "on the participation of state and private mass media in election procedures, rules and control on their application" can be brought here as an example.

The first paragraph of the first chapter state, that "CEC of Georgia is entitled to request from TV and radio companies the time table of its transmission time and to control its compliance with the requirements of law."

When we are dealing with the control, especially with the control of TV and radio companies, we should be very careful. Obviously TV and radio company is obliged to follow to the requirements of the law, to allocate time according to the rules prescribed by law and so on. However when the mechanisms of control, its limitations, procedures for its realization, corresponding norms are non existent, obviously independence of TV and radio companies is jeopardized.

The same is the approach in respect to evaluation of sub clauses of the b) and c) of the same paragraph. Pursuant to the sub clause b), "CEC is entitled to request from TV-radio company the time table of distributing paid period a day, dedicated for each political party, election subject, respective tariff and to control compliance of the aforementioned with the legislation in force."

According to the sub clause c) CEC "is entitled to implement observation and control for not using the provided transmission period by political parties and election subjects, as well as on issue of the time redistribution; and to request from TV and radio companies detailed information in respect to the issues."

The CEC should have the mechanism of control, which would have provided the maximum level of independence of TV and radio companies. It is inadmissible to unreasonably request aforementioned materials for TV and radio companies, moreover, that CEC can receive information concerned by the control of transmission period or the fund of election campaign of elections subjects.

The law should at least provide, that the CEC is entitled to request the information on the bases of application of election subjects, containing substantiated assumptions on the violation of law by TV and radio companies (e.g. some of the election subjects was not treated equality, different tariffs are being introduced, transmission period is divided unequally. and so on)

Otherwise, the form of control envisaged by the decree is inadmissible, especially without the active participation of the judiciary.

Control without establishment of limits, its mechanisms, hinders independence of TV and radio companies and results in unjustified interference in their activities.

Paragraph 3 of the article 1 of the CEC's decree goes even farther. It states, that TV and radio companies and other mass media "can not broadcast reporting or comments bearing nature of propaganda pertaining to the activities of election persons or its representatives; transmission or publication of the interviews or statements of agitation character of the election persons or their representatives except the transmission period, envisaged for pre-election propaganda or political advertisement is also prohibited."

Prohibition of reporting and comments is not only interference in the independence of Mass Media, but also violation of freedom of speech and expression. It can not be justified, even if such limitations apply only to certain period of election campaign.

The main indicator in such a case should be the public interest in respect to receiving comprehensive and objective information on the activities of election subjects. Its necessity is clearly demonstrated during the final stage of election campaign. Introduction of limitations on the comments which are considered as freedom of expression is unlawful.

On the other hand, the press has a mission to disseminate ideas and information on political and other issues of public interest. Whilst the aforementioned provisions deprive representatives of media opportunity to reflect pre election procedures impartially .

7. Adjacent Legislation

Responsibility for the prevention to implement freedom of speech

The Criminal Code of Georgia contains certain provisions, which guarantee realization of the right to freedom of speech, both for the ordinary person and a journalist. The issue is regulated by the articles 153 and 154 of the Code.

Article 153 prohibits encroachment on the right to freedom of speech. Namely, "Illegal interference into exercising the right to freedom of speech or to receive and disseminate information that has resulted in a considerable damage or has been perpetrated by using one's official position, -shall be punishable by fine or by correctional labor for up to one year in length or by imprisonment for up to two years

in length, by deprivation of the right to occupy a position or pursue a particular activity for the term up to three years."

Article 154 guarantees the aforementioned rights directly for journalistic activities: "Illegally preventing a journalists from carrying out his/her professional activities, i.e. his/her coercion into disseminating or not disseminating information, - shall be punishable by fine or community service from 120 to 140 hours in length or by correctional labor for up to a two-year term. The same action perpetrated under violence, threat of violence or by using one's official position, - shall be punishable by fine or arrest for up to a two-month term or by imprisonment for up to two years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term up to three years." The concept "coercion" applies to both physical and psychological coercion, direct or indirect.

The aforementioned provisions are strong legislative guarantees for the realization of right to freedom of speech, including representatives of mass media, however for unknown reasons they are not applied to. Respectively criminal cases were not initiated in Georgia with the application of the articles.

Responsibility for the disclosure of the state secret

Issues of liability on the disclosure of the state secret are regulated by the Criminal Code of Georgia and law on "State Secret". For considering information as state secret, it is necessary that "public official with respective authority, according to the rules established by law, made it secret and grated a signature of "confidential"."

According to Georgian legislation, for the disclosure of the state secret, liability can rest on the person, which due to his official position is obliged to protect the information, as well as on other persons, including journalists. Pursuant to the article 313 of the Criminal Code of Georgia: "Disclosure of the state secret, i.e. transferring the state secret of Georgia to a foreign state, foreign organization or their representative or its public disclosure to the detriment of the national interests of Georgia as well as any other action for this purpose that makes the state secret accessible to an outsider, perpetrated by the one who had the knowledge of such secret due to his/her official position or to whom it was made known with respect to a special cir-

cumstance,-shall be punishable by restriction of freedom ranging from five to fifteen years in length" .

According to the article 320: "Intentional or negligent disclosure of the state secret by the one who had the knowledge of such secret due to his/her official position or to whom it was made known, if it bears no signs of the actions referred to in Article 313 or 314 of this Code,- shall be punishable by the restriction of freedom for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years."

Paragraphs 5 and 6 of the article 38 of the law on "State Secret " stipulate directly responsibilities of a mass media: "if the state secret was disclosed by mass media, and thus considerable damage was inflicted on the state security and international relationships of Georgia, or human life was threatened, liability prescribed by law would rest on the editor. (person responsible for editing)".

"Publication of an information, containing the state secret, in mass media, dissemination of which has influence on the protection of public security, or which has already been disseminated earlier is not considered as an offence."

We think, that Georgian courts should taken into account paragraphs 5 and 6 of the article 38 while applying to article 313 and 320 of the Criminal Code. Thus they will follow to the corresponding standards of the European court according to which:

- If the information pertaining to the public security, has already been disclosed, its withdrawal from circulation, prohibition, or punishment for its dissemination is inadmissible;
- Information on the issues of National Security can be considered confidential, if its public dissemination would damage national security. Information can be kept secret for a certain period. Status of keeping information secret can periodically be subject to overview. While keeping information secret, pertaining to national security, public interest towards the information concerned should also be taken into account.

The listed provisions were formulated by the European Court, namely while hearing the case: "Revenging Weekblad BLuF v. Netherland ", which concerned disclosure of the State Secret by journalists, which is also the issue of public interest.

In its judgment the court held, that "legislation, which absolutely excludes dissemination of information, pertaining to the questions of national security and prohibit realization of public control in respect to secret forces, violate article 10 of the convention, as far as introduction of the aforementioned barriers is not necessary for the democratic society. Courts of the state-parties would provide the press, which protect interests of public, with the opportunity to reveal illegality, negligence and other negative acts of secret forces."

The Johannesburg Principles of 1995 reflect the same position, pursuant to the principle : "A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest."

According to the Principle 15: "No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure."

The recommendation of the Committee of Ministers of 1981 on the "Access to information held by public authorities" provides for the following limitations:

- limitations and restrictions should give the reasons on which the refusal is based, according to law or practice.
- limitations and restrictions should be necessary in a democratic society for the protection of legitimate
- Any denial on the request of information should become the subject of judicial review. Apparently the these rights would also refer to the information connected with the sphere of national security. /A guide to the implementation of article 10 of the European Convention on Human Rights, Human Rights handbook #2 Council of Europe Publications/

Regulation of advertisement

Issues pertaining to advertising are regulated by the law "On advertisement" adopted on February 18.1999. The law stipulates such con-

cepts as "advertisement", "unfair advertisement", "unreliable advertisement" and so on. The state control on advertising activities is carried out by the State Antimonopoly Service of Georgia, which according to the chapter 5 of the law "On monopoly activities and competition" undertakes preventive measures and terminates inadequate advertising. The antimonopoly service is entitled to impose on physical and legal entities administrative sanctions envisaged by law, for inadequate advertisement.

On its turn, physical or a legal person can apply to court with the demand for complete or partial cancellation of the decision of antimonopoly service.

According to the law "On advertisement" responsibility for advertising is divided. So, the producer of the advertisement is liable for the violation of law in part which concerns registration and preparation; distributor - for the violation of the article pertaining to the time, place and means of advertising and customer for the content of information presented in advertisement, if its is not proved, that the violation has taken place for the fault of producer or a distributor.

In our opinion, responsibility for the content of information should be regulated both by the domestic legislation of Georgia and the norm of European legislation, particularly European case law.

In one of its judgment in case "Markt Intern Verlag and GMBH and Klaus Beermann" the Strasbourg court stated, that: "information of a commercial character should not be excluded from the scope of the article 10, paragraph 1 of the European Convention, which do not apply only to certain issues pertaining to information or opinions or forms of its expression."

Human Rights Commission, in case "Lijenberg v Sweden" stated, that "Commercial advertisement and advertisement companies are protected by the article 10 of the convention. In case "X and Church of Scientology v. Sweden" the commission extended the opinion and stated, that "commercial word, should fall within the frame of protection, envisaged by article 10, however frames of protection should be the ones, which are applied for during expression of political opinions, along to which values guarantying freedom of expression, from the position of Convention are the issues of the greatest importance."

Protection of minors against harmful influence

The law on "Protection of minors from harmful influence" was adopted in Georgian on September 28, 2001. The purpose of this law is protection of minors against harmful influence which "is connected to display of films, video, movies, printed production, with consumption and realization of alcoholic drinks and tobacco, participation in gambles. Which can make psychological and physical harm to the health of a minor, to his/her moral and social development."

At the same time, the law prohibits confiscation of films for the realization of the given law.

One of the articles provides for, that the Minister of Education and the Ministry of Labor, Health and Social Security can issue a permission on the publication of printed production, pertaining to sex, "which contain materials of scientific-educational and information character, and details expressing sexual attitudes are given only in such a form, that is obligatory for the illustration of educational and information issues."

According to Georgian experts, the law having at the first sight humane objectives, can create serious problems to the realization of freedom of expression. It can significantly restrict the right, because violation of the law can be used by the authorities as a motive for chasing unfavorable means of mass media.

Journalistic Investigation

Problems in legislation relating to lack of journalistic investigation-which is one of the interesting directions in journalistic, deserve separate discussion.

Newspaper publications and TV programs on journalistic investigation, denouncing high officials in corruption and other illegal affairs have great resonance in a society.

However, these sensational accusations are not followed by practical results, in respect to concerned high officials or other famous persons (dismissal from occupied position, initiation of court proceeding)

The matter is, that in majority of cases journalistic investigations are conducted by using audio and video recorders, by hidden cameras, according to Georgian Legislation such records, made by private persons, including journalists are illegal.

The court can not initiate criminal case on the bases of illegally obtained materials. Even if the criminal case is initiated on the ground of some charges, audio and video tapes can not be considered as evidences, and a judge when making judgment has no right to refer to them (He can just take hem into account).

Moreover, the journalist can be held liable for illegal shooting under the claim of the one to whom was inflicted the damage. However such cases so not exist in practice till now.

Hidden scrutiny is permissible in connection to a private person by Georgian Legislation only in the frame of law on "Operational-investigative activities" from the side of state organs.

As for newspaper publications and materials on the facts of violation obtained by the journalists "lawfully", law enforcement agencies can even in such case initiate criminal proceeding, however they are not obliged to do so.

Number of national experts think, that journalists should be entitled to conduct hidden observation on the activities of high officials and public agencies. According to their contenders, it is inadmissible as far as right to privacy guaranteed by the legislation would be violated.

Supporters of mass media, in regard to granting them the right on hidden observation, specify as counter argument, that in current situation the case deals not with a private life, but with an activity of a person representing on behalf of a state.

It should be mentioned, that at the end of 2003, the chairman of the Supreme Court of Georgia Vladimir Chanturia has initiated considerations on the introduction of amendments to the Criminal Code, which would have allowed the courts to accept audio and video recordings, made during journalistic investigation, as evidence.

The analysis of Georgian Legislation in the sphere of mass media clearly demonstrate, that current legislative base do not guarantee effective functioning of independent mass media. The situation is also aggravated by not absolutely correctly developed practice of national courts.

Liberal norms of journalistic ethics, acceptable for the society have not been elaborated yet; awareness of journalists in respect to legal standards regulating their activities is low.

However, political processes developed in Georgia, as well as high level of public activity gives us hope, that all the problems would be solved in the nearest future.

COMPARATIVE ANALYSIS OF THE LEGISLATION OF GEORGIA, ARMENIA AND AZERBAIJAN IN THE FIELD OF MASS MEDIA AND THE FREEDOM OF SPEECH

Presented comparative analysis is based on the research conducted under "Harmonization of Media Legislation of South Caucasus Countries with European Standards" trilateral project (as of 31 March, 2004).

Aim of the analysis — to outline the ways of solving the problem, which were identified during the researches of legislation regulating activity of mass-media in Georgia, Armenia and Azerbaijan, and eradicate factors which caused problems.

The Comparative analysis permits to determine the features of the problem in a certain country, which is not of a little importance for prevention of complications of analogical character in other countries of the region.

Comparative analysis is presented in accordance with the following structures:

- Constitutional regulations;
- General legislation on mass-media;
- Regulation of broadcasting;
- liability for offences and slender;
- Freedom of information;

Constitutional Regulations

Development of the South Caucasian countries during last years passed in the same dynamics. It was characterized by considerable influence of the Soviet period — on social, political and legal realities.

The Constitutions of Georgia, Armenia and Azerbaijan were adopted approximately at same period. Constitution of the three countries

refer to the same group of so called: "Post Soviet Constitutions" and are considered to be more or less democratic.

The analogues directions of the development of legislative relations in these countries must be underlined, which was caused by aspiration for integration in the European structures. As an example may serve those large-scale legislative changes, which were held after the entry in the European Council of Georgia, Armenia and Azerbaijan.

Constitutions of the three countries guarantee right to expression together with other fundamental rights and freedoms, at that forcing a person to change or reject his ideas is prohibited.

Mechanisms of restriction of freedom of expression are similar to the compatible norms specified in international law. In particular these restrictions must be envisaged by the law and must serve as the necessary condition for the protection of public safety and state security, for public order, for health care and morality, also for freedom of other persons in democratic society.

Constitutions of the three states recognize freedom of requesting and receiving information, but by the Constitutions the right is provided in general terms and the legislation in this field is ambiguous and contradictory.

In whole the Constitutional norms of the South Caucasian countries concerning the questions of freedom of expression also freedom of media do not contradict with the commitments of Georgia, Armenia and Azerbaijan from the point of view of international law.

General legislation in the field of media

At present, situation in the South Caucasian countries is the following:

- In Azerbaijan law on "Mass Media" is in force, it was adopted in 1991 and amendments were introduced in 2002.
- In Armenia law on "Printing and other Mass Media" was changed by the new law on "Mass Information" which entered into force in February 2004.

- In Georgia as of March 31, 2004, the main legislative act in media sphere is the law on "Press and Other Media" in force since 1991. However it is expected that in the near future this law will be replaced by a new law on "Freedom of Speech and Expression".

First laws in the field of mass media were adopted at the beginning of the post communist period and were characterized by the same features that were peculiar to the legislative acts of that period. So they included and some include even now norms of state control which are groundless for new system. In the field of media such norm was the demand for obligatory registration of printed mass media that contradict to European standards.

In particular, according to the law of Azerbaijan on "Mass media" private and legal persons, willing to set up a publishing house must for 7 days before publishing apply to the authoritative organ of executive branch (such is Ministry of Justice). In case if the printed information is disseminated before officially applying, or application includes improper information. The organ of an executive branch may initiate the termination of the publishing organ before the appropriate judicial organ.

Article 19 of the law of Azerbaijan on "Mass Media" is worth mentioning. The article authorizes the Court to termination of its publishing. The practice shows that the obligations of compulsory registration may serve as a serious tool in the hands of the government in struggle with the activities of the opposite groups. The legislation that recognizes the possibility of termination or suppression of the activities of mass media, might be deemed inadmissible in the democratic society.

Since the adoption of the Armenia law on "mass information" the demand on registration of media has been absolutely abolished. Moreover, for the establishment and initiation of the activities of mass media, there is not even a necessity of official notification of the government. It is also important that the protection of the sources of information is much strengthened in the new law (article 5): in the case of serious crimes, the Court is the only eligible organ to reveal the source of information. Law specifies conditions when such demands may be made. In particular, "when there is the necessity of criminal protection of public interests more than public interests in non-disclosure of information, and the alternative means of interests' protection are exhausted". In this case the journalist may claim a closed trial.

The law of Azerbaijan on "Mass media" underlines that only the Court may demand from the journalist or the editor to reveal the sources of the information. It specifies the cases when the Court has right to ask for the revealing:

1. with purpose to protect the life of a person;
2. with purpose to avoid commission of a serious crime;
3. with purpose to protect the persons charged with commission of a serious crimes;

Legislation of Georgia and Azerbaijan, in the fields of mass media, envisage prohibition of dissemination of information including state secrets. This restriction has been partially preserved in the new Armenian law on "Mass Information". Most of the European countries do not recognize such practice. Only the person that is under the official duty to keep the state secret should be made liable for its disclosure.

Regulation of broadcasting

The legislation of the southern Caucasian countries that regulate fields of broadcasting are also alike; Identical are the problems that local broadcastings are facing.

The democratic principles and order of formation is one of the essential elements for the independence of organs regulating the field of broadcasting. Thus, in the three south Caucasian states the greater role is played by the governors of the country.

Particularly, according to the Armenian law on "Television and Radio" formation of two regulating organs - National Commission on Television and Radio Broadcasting and the Council of Public Television and Radio Broadcasting - are under the competence of the President of the State. The National Council on Public Television and Radio Broadcasting of Azerbaijan is based upon the Order of the President on December 25, 2002. The similar principles concerning the order of formation of regulating bodies is envisaged by the law on "Post and Communication" of Georgia.

In such cases states keep the control over the broadcasting spheres. The regulating organs just perform the executive functions.

One of the serious problems is the fact that in Azerbaijan and in Georgia (notwithstanding the obligations of these countries before the Council of Europe) the state broadcasters still function. They are mostly used for the popularization of government policies, that, at one hand, is contrary to inadmissibility of the domination of one position over other on air, on the other hand causes clear misbalance and creates unequal conditions on broadcasting market, as far as state broadcasters generally use the best channels, covering the whole territory of the country.

Though, the national television of Armenia is transformed into a public one, actually, it still keeps on being a governmental one, and is a speaking-trumpet of the government. The main reason for that is the right of the President to personally form regulating organ — Council of the Public Television and Radio Companies, established by the law on television and radio.

Liability for defamation and insulting

Most clear example of the right of Soviet population is the provisions of the criminal legislation of the South Caucasian countries, concerning the liability for defamation and insult (though the sanctions in these countries differ). For example, in Georgia insult is punishable only if it is directed towards a judge or any participant of the trial.

In this sense article 323 of the penal code of Azerbaijan may be deemed as a culmination, which concerns the liability for defamation and slander. Such an approach is contrary to the article 25 of the Constitution of Azerbaijan and the practice of the European Court, in accordance to which the state officials and the head of the state is obliged to show more tolerance than the ordinary citizens.

As for Armenia, Articles 135, 136 and 318 of the country's Criminal Code stipulate criminal responsibility for insult and defamation up to imprisonment. Meanwhile, international practice tendencies are directed at transferring the liability for such acts from the sphere of criminal law into civil one.

From legal point of view the practice of ambiguous implementation of these terms, having the key meanings as "honor" and "business reputation", "defamation" and "insult".

The draft laws or the recommendations on discussion of the liability for defamation and slander are elaborated in all three states. And only political will is needed for realization of these amendments in favor of the freedom of speech.

Freedom of information

First steps for guaranteeing freedom of information in Georgia were made in 1999 when the public administrative code was adopted. Its third chapter is completely dedicated to freedom of information.

Notwithstanding the fact that this legislative act regulates the questions concerning the freedom of information, it was not easily put in practice because of the Soviet mentality of the public authorities. Activities of the non-governmental organs have significantly changed the picture and the implementation of the law became intensive.

Adopting the law on "Freedom of Information" in 2003 was a progressive step in Armenia. The law envisages all main legislative mechanisms that are necessary for the regulation of the relationship in this field. On the second hand it causes disturbance, that after several months since the law was put in force, the possibility of making amendments to normative-legal acts was considered by state authorities. The draft was being prepared which in case if it would be adopted in its primary form would considerably worsen the law in force, as the independent experts estimate.

As to Azerbaijan, there is no common systemized legal act, regulating freedom of information. From this point of view it would be reasonable to take into consideration the recommendations made by Baku press club about the necessity of adoption of two new laws on "Freedom of Information" and on "State Secrets."

As the analysis has shown, notwithstanding the positive changes in the legislative acts in the field of mass media in Georgia, Armenia and Azerbaijan, in all three countries the legal base regulating the activity of media needs the perfection and is to be brought in accordance with recognized international standards and norms.

The obligations in the information field imposed on the Caucasian States after entry in the Council of Europe, were not fulfilled. Especially it concerns the regulation of broadcasting sector.

New laws in the field of mass media elaborated by the active participation of local and foreign non-governmental organizations and adoption in the countries of the region in 2003-2004, in the sense of responsibility before the Council of Europe, are able to approach the legal regulation of the activity of media to the international standards.

It is necessary to pay more attention to the popularization of these normative-legal acts — in the professional circles (among journalists and lawyers) and in the society in whole. It may help to successfully implement new laws on means of mass information if South Caucasian states.

RECOMMENDATIONS ON THE LEGISLATIVE IMPROVEMENTS OF MEDIA AND FREEDOM OF EXPRESSION IN THE COUNTRIES OF SOUTH CAUCASUS

The provided recommendations are developed under "Harmonization of Media Legislation in South Caucasus Countries with European Standards" project. This work is based on profound analysis of the current media and freedom of expression legislation in Azerbaijan, Armenia and Georgia.

The recommendations are aimed at identifying possible ways to remove flaws in the legislative regulation of media field in the three countries in the course of the analysis. Accordingly, the project partners laid emphasis on the problems demanding concrete decisions and a new approach.

The situation with the legal field of South Caucasus countries for the past few years may be referred to as transitional. The accession of Georgia, later Armenia and Azerbaijan to the Council of Europe conditioned more intensive activity on amending human rights legislation in the three states. Naturally, transformations in media regulation became an integral part of this process.

Below-cited are documents forming a normative base that contributes to harmonization of media legislation with European standards and is used as a starting point for preparing the recommendations:

- Article 10 of the European Convention on Human Rights and Main Freedoms and related judicial practice;
- European Convention on Transfrontier Television
- Resolution and Recommendations of the Committee of Ministers and PACE on legal regulation of media.

The recommendations on legislative improvement of media and freedom of expression are prepared by: in Azerbaijan - **Baku Press Club**; in Armenia - **Committee to Protect Freedom of Expression**; in Georgia - **Young Lawyers Association**.

AZERBAIJAN

1. The Law of the Azerbaijan Republic "On Mass Media"

Following the adoption of separate Law "On Television and Radio Broadcast", provisions of this Law, regulating TV broadcasters' activities, ceased to be valid and, hence, it presently regulates activities of printed mass media and information agencies. It would then be appropriate to title the Law as "Law of the Azerbaijan Republic on printed Mass Media".

At the same time, its preface is to be presented in the wording as follows:

"Present Law establishes for printed mass media and information agencies general rules of search, receipt, preparation, transfer, production and spreading of mass information in the Azerbaijan Republic, as well as organisational, legal and economic principles of printed mass media and activities of information agencies, aimed at exercising citizen's rights to obtaining complete, reliable and operative information".

Article 2 on the sphere of application of the Law is suggested to present in the wording as follows:

"Present Law applies to printed mass media and information agencies, established on the territory of the Azerbaijan Republic, as well as to a part of printed matter of mass media and information agencies, spread on the territory of the Azerbaijan Republic only".

Besides, a notion of specialised mass media is to be excluded from Article 3 (Main definitions) of the Law "On Mass Media", since Article 15 of the same Law, which provided for activities of specialised mass media, was annulled as far back as in 2001.

To be excluded from this Law are all the notions and terms, related to television and radio broadcasters and mentioned in the 3rd part of Article 11, 2nd and 3rd parts of Article 12, 2nd part of Article 21, 2nd

part of Article 44, 2nd and 4th parts of Article 45, in the clause 4 of Article 59 and clause 5 of Article 60. This is accounted for by the fact that all the norms and notions, as set forth in these Articles and pertaining to television broadcasters' activities, are specified in the Law "On Television and Radio Broadcast".

Experts also offer to exclude the part 2 of Article 52 (Dissemination of information obtained from foreign sources), which says that "restriction on direct receipt of television programs is admitted in cases as set forth in inter-state agreements concluded by the Azerbaijan Republic". This clause is found in the Law "On Television and Radio Broadcast" and just repeated in the Law "On Mass Media".

Procedure of printed mass media registration is not compulsory in the world practice, since it may allegedly become a means of abuse. Organisation "Article 19" also recommends to cancel this procedure. The human rights commission noted that "effective measures are required to avoid such a control over mass media that could impede exercising universal right to the freedom of speech".

At present, the system of instituting printed mass media in Azerbaijan is consistent with the above-mentioned conditions, not contrary to the freedom of speech. Thus, no permission of state bodies is required to institute a printed matter. However, legal or physical entity, desirous of instituting a printed matter, should officially apply to an appropriate of executive power (Ministry of Justice) 7 days before the issue to the first member. Owing to some circumstances, arising from the application of the law, this might run counter to international standards, which provide for independent functioning of registration system.

The Law says that when disseminating a printed matter without an official application of its founder to an appropriate body of executive power or in the event of detecting unreliability of information presented, an appropriate body of executive power will raise a question to the court regarding the termination of the activities of the given structure. Of great importance on that score is Article 19 of the Law "On Mass Media", which provides for closing a newspaper and terminating its activity to comply with a court decision.

However, it would be appropriate to hold the opinion that a specified ban on the publication might be imposed in the event that a publisher failed to notify of his intention to create a printed matter. Article 14 of the Law "On Mass Media", making it incumbent upon potential publishers to notify an appropriate body of executive power a week before the issue of the first number, might be effected in case of such a violation. In this connection, it is suggested to add a text in the 2nd part of Article 14, regulating the establishment of printed mass media in the wording as follows: "Before applying to court, an appropriate body of executive power shall notify the newspaper beforehand of the necessity of removing breaches exposed".

2. The Law of the Azerbaijan Republic "On Television and Radio Broadcast"

Article 6 (System of Television and Radio in the Azerbaijan Republic) of the Law applies a provision that the foundations of the national television and radio in Azerbaijan, together with private, public and municipal broadcasters, are also formed of state broadcasters, which is contrary to international standards and commitments of the country to the CE. Therefore, a word "state" should be excluded from the 1st part. Correspondingly, Article 7 (State Broadcaster) should be annulled.

Under Article 11.2 of the Law "On Television and Radio Broadcast", a state body in charge of television and radio broadcast in the Azerbaijan Republic will be established to comply with clause 32 of Article 109 of the Constitution of the country. As is known, the above-mentioned state body (National Council for Television and Radio Broadcast - NCT) was set up under Presidential decree of 25 December 2002.

The state body is, among others, responsible for delivery of licenses to television and radio broadcasters. In practice, the NCT dependence on executive power may result in violation of CE requirements regarding honest, transparent and fair license delivery procedures. In this connection, it is recommended to modify the Law, so that licenses would be delivered to broadcasters by a body, independent of executive power. With a view of ensuring independence of the state body in charge of television and radio broadcast, it is essential to

draw up respective procedures to be secured in the legislation. At any rate, this body should be independent of executive power.

Note that Article 32 (Program Requirements) of the Law, along with some other program requirements, stipulates that these programs shall focus on education and culture issues, consistent protection of national spiritual values.

Under the international legislation, all the television and radio broadcast obligations must be clear and precise, barring ambiguous interpretation. International courts recognise that all mass media types, adopted in democratic society, perform, regardless of forms of property, two specific social functions: informing public opinion and playing a part of "public supervisor" over actions of the government. With that end in view, it is recommended to exclude words "consistent protection of national spiritual values from Article 32 (clause 0.9).

Article 40 (Rights and Duties of Broadcasters) of the Law is effective in attributing ethical standards to self-government competence. Yet, the authorities should not thrust their will on bodies of self-government. A legislative standard, demanding from television and radio broadcasters to follow a code of journalist ethics, even if the code has been drawn up and adopted by bodies of journalist self-government, cannot be excused. As a matter of fact, ethical standards are a private business of each individual and, hence, subject to self-regulation. In this regard, it would be appropriate to exclude a phrase "to follow professional ethics when broadcasting's from Article 40 (clause 2.5). It should be noted that Article 3 of the Law has already specified the necessity of following professional ethics as a principle of broadcaster's activity. Hence, there is no need in singling out a separate clause on the observance of professional ethics within duties of television and radio broadcasters. The Law is not entitled to lay down such a demand.

3. Access to information laws

It is essential to take the following steps to entitle each citizen of the Azerbaijan Republic to get a properly guaranteed access to information:

- draw up a new Law of the Azerbaijan Republic "On Access to Information";

- revise or adopt a new Law of the Azerbaijan Republic "On State Secret".

The new Laws shall include provisions on compliance of possible damage from disclosing information with the extent of public interest prevalence in the given information.

To reduce date of information delivery by appropriate inquiries, Article 10 of the Law of the Azerbaijan Republic "On Procedures of Consideration of Citizens' Inquiries" should also be modified. The Law should impose restrictions on any prolongation of the date of information inquired more than twice as compared with initially fixed date.

Dates of consideration of these inquires, as set forth in the Law "On Freedom of Information", "On State Secret", other normative acts of the Azerbaijan Republic should comply with dates, as set forth in Article 10 of the Law of the Azerbaijan Republic "On Procedure of Consideration of Citizen's Inquires".

Also to be revised are normative-legal acts related to the Law "On State Secret":

- "List of Functionaries Entitled to Attribute Information as State Secret";
- "List of Information Pertaining to State Secret";
- "Rules of Determination of Secrecy Level Pertaining to State Secret";
- Provisions on Certification of Information Protection Means".

The said normative acts should mention information, which is really attributed to state secret, not that being open.

All the laws regulating access to information should comply with principles as follows:

1 Principle of maximum openness of information: major principle taken as a basis of the freedom of information legislation.

2. Demand on information publication: state bodies should publish important information.

3. Support of open government: state bodies should actively support the open government.

4. Restricted list of exceptions: exceptions must be clear and specified, information may be concealed to comply with a list of exceptions provided: a) disclosure of information incurs an essential damage to the state policy; b) level of damage incurred in consequence of disclosure of information exceeds a level of public interest in it.

5. Procedures aimed at facilitating access to information: inquiries of information receipt should be processed rapidly and fairly; also, there should be an opportunity of revision of all refusals from delivering information to independent bodies.

6. Payment: excessive payment for information services cannot be an obstacle in getting access to information.

7. Open sessions: sessions of state bodies should be open for public.

8. Priority importance of information disclosure: laws, adverse to principles of maximum disclosure of information, should be modified or cancelled.

9. Protection of "whistleblowers": "whistleblowers are citizens divulging information about delinquencies, which are to be protected.

4. Civil Code of the Azerbaijan Republic

Regarding Article 23 (Protection of Honour, Dignity and Business Reputation) of the Civil Code of the Azerbaijan Republic, it is recommended as follows:

Definitions "honour", "dignity", "calumny", "insult", "humiliation of honour and dignity", "indecent form" shall be disclosed in the legislative acts adopted by the Parliament of the Azerbaijan Republic.

A resolution of the Plenum of the Supreme Court of the Azerbaijan Republic of 1999 "On Practice of Application by Courts of the Legislation on Protection of Honour and Dignity" has to be revised.

The new resolution must provide explanations, consistent with legal standards of the European Court.

5. Criminal Code of the Azerbaijan

Regarding Article 147 (Calumny, 148 (Insult), 323 (Insult of the Head of the State — President of the Azerbaijan Republic) and 324 (Outrage on State Emblem of Flag) of the Criminal Code of the Azerbaijan Republic, it is recommended as follows:

The practice of the latest years is indicative that functionaries, with the purpose of protecting their "honour, dignity and business reputation", primarily apply to criminal-legal means with reference to Articles 147 (Calumny) and 148 (Insult) of the Criminal Code of the Azerbaijan Republic. When adjusted for excessively tough attitude of functionaries to mass media, specifically to journalists, which, in turn, leads to the restriction of the freedom of speech in the country, it is expedient that the legislation should provide civil-legal responsibility for defamation.

With that end in view, it is recommended to annul Articles 147 and 148 of the Criminal Code of the Azerbaijan Republic.

The same is true of Article 323 (Insult of the Head of the State — President of the Azerbaijan Republic), since it is a gross violation of Article 25 of the Constitution of Azerbaijan (Right to Equality) to establish a principle of inequality between President of the country and the rest of citizens, contrary to the Main Law.

Further, under Article 109 of the Constitution of the Azerbaijan Republic, President will make representation to Milli Majlis (Parliament) on appointment of judges of the Supreme Court of the country, judges of other courts of the Azerbaijan Republic. Thus, when considering cases on insulting President by these courts, Article 127 of the Constitution of the Azerbaijan Republic (Independence of Judges, Basic Principles and Conditions of Justice) is violated. It should be noted that the Ministry of Justice, whose head is also appointed by President, makes suits by Article 323 of the Criminal Code of the Azerbaijan Republic.

The above-mentioned provisions of the said Articles run counter to the International Pact on Civil and Political Rights and Optional Protocol of the Pact, as well as Article 10 of the European Convention.

Along with annulling the given Articles, it is recommended either to adopt a unified Law "On Defamation" of the Azerbaijan Republic or modify and amend the Civil Code of the Azerbaijan Republic to regulate relations in the sphere of honour, dignity and business reputation.

It is also essential that the Constitution Court of the Azerbaijan Republic would define a definition "outrage", used in Article 324 of the Criminal Code of the Azerbaijan Republic (Outrage on State Emblem and Flag).

6. Election Code of the Azerbaijan Republic

Following the adoption of the Law "On Public Television" and subsequent transformation of the state television into the public one, appropriate norms of the Election Code, containing a definition "state television" should be changed into "public television".

7. The Law of the Azerbaijan Republic "On Advertisement"

Clause 7 of Article 6 of the Law "On Advertisement" (General Advertisement Requirements) stipulates that "cultural values, including cultural values of religious designation, cannot be used for advertisement purposes without the consent of their owners (users), including religious structures".

The Law cannot provide for standards prohibiting the placement of advertisement only because they may defame objects of art, which are of world and national value. Recently advertised picture in Great Britain with winking Mona Lisa, as well as numerous advertisements with pictures of Liberty Statue are sure to be prohibited. It is not worth protecting national property and cultural values through restricting the freedom of speech.

The problem may be solved through education and cultural development. Therefore, it is recommended to exclude clause 7 from this Article.

The above-mentioned has a relation to Article 9 (Unethical Advertisement) of the Law. A phrase "defames objects of art, which are of national and world property" should be excluded from the 2nd part of clause 1 of the given Article. Preference has to be given not to imposing restrictions but to defining main principles of advertisement activity in the law, specifically the observance of universal standards of humanity and morals.

ARMENIA

1. RA Law "On Mass Communication"

The RA Law "On Mass Communication" was adopted in December 2003 and came into force in February 2004. While owing to the efforts of journalistic associations (Yerevan Press Club, Committee to Protect Freedom of Expression, the Journalists Union of Armenia and Internews Armenia) the main body of the provisions endangering the freedom of expression was either abolished or edited until acceptable, nevertheless, in our opinion, the Law is in need of improvement.

Our recommendations on this are based on the proposals submitted to the Parliament earlier but dismissed. Should new problems arise; the Committee will come up with new initiatives to resolve them.

Thus, in our opinion, the acting Law gives an inappropriate definition of "online mass medium". Article 3 - "General Notions" - says:

"2) 2. The mass communication (further referred to as communication) - the dissemination of information accessible by unlimited number of people, the main purpose of which is to ensure the constitutional right of a human being to seek, receive and impart information and ideas. The information is realized by dissemination of mass communications media by subscription or without it, on paid or free basis:

....

- public communication network (online medium) as an information resource containing information accessible for unrestricted number of users, regardless of its update periodicity, storage duration and other criteria".

According to this clause, any personal homepage can be considered a mass communication medium.

We propose to give a definition where the "online communication medium" would only apply to the media that are professionally engaged in gathering and disseminating information, namely: "...*public communication network (online medium) as a **periodically updated** information resource having a distinct address containing information **intended** for unrestricted number of users.*

Our next proposal refers to Article 5 - "Protection of information sources". Although after the numerous discussions the Law now has a stronger mechanism to protect the information sources, we do insist that this Article be made fully compliant with the Recommendation (2000)7 of the CE Committee of Ministers "On the right of journalist not to identify the information source". The point of the amendment proposed is that the authorities have no chance to use repression for the disclosure of information source.

The Article mentioned must be supplemented by clause 3:

"3. The proofs obtained by violating the secrecy of correspondence and telephone conversations of journalists, confiscation of journalistic notes, photographs, audio and video records, regardless of the purpose of these actions, are considered as illegally obtained and cannot be used as a basis for a court ruling on a civil or criminal case. If the court ruling on the civil or criminal case used proofs obtained in an illegal manner this is an unconditional reason to abolish the ruling by appeals, cassation or in supervisory proceedings".

The definitions proposed must also be introduced in the Civil Procedural and Criminal Procedural Codes of Armenia.

The following addition is to be made in the RA Criminal Code as well: *"The oral or written command to confiscate journalistic notes, photographs, audio and video records is an abuse of authority. This abuse is punished by a dismissal from the position occupied and/or by a fine or by both in case these actions resulted in injuries inflicted on the journalists or damage of the recording equipment"*.

The introduction of amendments and additions to Article 6 — "Accreditation of journalists" is also topical, especially considering the fact that the RA Government, proceeding from the demands of the Law, started the discussion of the draft Model Procedure for accreditation of journalists with the state bodies that is to serve as a basis for these agencies to develop their own proceedings. In our opinion, the approval of the Accreditation Procedure cannot be delegated to the Parliament or state administration bodies. The latter ones can only adopt the procedure of work of accredited journalists in these bodies. The rest should be defined in the legislation. With regard to this we propose the following narration of Article 6.

Article 6. Accreditation of Journalists

1. The entity engaged in communications activities has a right to address the state administration bodies to accredit his/her journalists.

The application of accreditation should specify:

a) the name of the media,

b) the name and the last named of the journalist accredited,

c) contact information (address of the journalist and media, the e-mail address (if available), telephone numbers).

It is prohibited to define other requirements for the accreditation.

2.State administration bodies define the Procedure of organizing the work of accredited journalists, which is an internal act of these bodies, The procedure cannot contain provisions that restrict or obstruct the activities of the journalist as well as result in the discrimination among the accredited journalists.

The refusal in accreditation can be challenged in court.

3. If any body of state administration has not adopted the Procedure to organize the work of accredited journalists, this Procedure should be determined within a month if at least one medium has addressed the body to accredit a journalist.

4. The accreditation of a journalist can be suspended or interrupted by a written application of the medium that presented the journalist for accreditation

5. The information intended for the media must be provided to all the accredited journalists at once and the notification of the time and place of the scheduled press-conferences and briefing should be made to these journalists well, in advance within reasonable timeframes.

For all the journalists accredited with bodies of state administration equal work conditions should be created.

6. *The procedure of accreditation in the Republic of Armenia of a medium representative that operates by legislation of a foreign state is defined by the Ministry of Foreign Affairs of the Republic of Armenia.*

7. *Representatives and journalists of a mass communication medium operating by legislation of a foreign state, accredited with the Ministry of Foreign Affairs of the Republic of Armenia, have a right to be accredited with the state administration bodies in accordance with Clauses 1-5 of this Article.*

8. *The absence of accreditation of a journalist with any specific body of state administration can be quoted as a reason to refuse providing information, provided for by the law.*

Now let us consider a problem which seems to have been solved in the Law. This refers to the publication of state and other types of secret, stipulated by the Law. Clause 1 of Article 7 of the RA Law "On Mass Communication" notes: " It is prohibited to disseminate communication that is legally defined to be a secret or to be promoting criminally punishable actions, as well as violating the privacy and family life of a human being.." Clause 3 of Article 9 says: : "The entity engaged in communications activity is not subject to responsibility for disseminating information legally qualified as secret, if this information was not obtained in a manner legally prohibited or it was not obvious that it was legally qualified as secret.

If the entity engaged in communication activities disseminated information, where the presence of data legally classified as secret would be self-evident, however the dissemination of this information is explained by the need to protect public interest, it is not subject to responsibility".

While a certain protection of the journalists and media is guaranteed here, in our opinion, it is insufficient. For this reason we propose to record it strictly in the Law that should a state secret be published, the responsibility lies with the holders of the secret, who were to guard it as their position demanded. Exempting them from the responsibility must be only pre-conditioned by the need to protect public interest.

With regard to Article 7 in general it should be noted that it, as we believe, includes differing concepts: state secret as well as protection of privacy and protection from concealed video- and audio recording. We think that the provision proposed here on the publication of state and other secrets must only be included in Article 9 on the responsibility, while the protection from concealed video and audio records needs separate definitions. Therefore, Article 7 -"Restrictions of the Right to Freedom of Expression in the Sphere of Information" — must be fully changed.

The version proposed:

"Article 7. Restrictions on concealed video and audio recording

1. *Journalists and media are prohibited from implementing concealed video and audio recording of a person who supposed that s/he is beyond sight and hearing distance of other people and undertook sufficient measures for that.*

2. *Dissemination of information, obtained by concealed video and audio recording is only allowed if:*

- *this information is received in a legitimate manner;*

- *the measures, taken by the person to be out of sight or hearing distance were clearly insufficient;*

- *the dissemination of such information is necessary to protect public interest".*

Another important problem for Armenia is that of state media. As the experience shows, the media, established with the participation of the state and fed from testate budget, existing, in fact, at the expense of the public, become the forums of the acting power. For this reason, un our opinion, the Law must prohibit the state administration and local self-administration bodies to be founders or shareholders of media. Therefore, we recommend that Article 4 of the RA Law "On Mass Communication" be supplemented by new Clause 4:

State administration and local self-administration bodies have no right to be the owner or a shareholder of a medium, but for the publications that cannot be considered as media under this law and are intended for the publication of official announcements, materials, normative acts and other documents. The state founds the Public Television and Public Radio, as stipulated by the RA Law 'On Television and Radio'.

To improve the general economic condition of media, as well as for stimulating scientific, educational, cultural, children's and other publicly important periodic print publications and TV and radio programs the state can allocated funds from state budget on a competitive basis."

In compliance with this the final provisions of the Law (Article 14) must have be attended with a new paragraph:

"After this Law comes into force within two years state administration and local self-administration bodies must privatize their ownership of media".

2. RA Law "On Freedom of Information"

It has been very alarming to witness that only three months after this Law came into force, the Armenian Government initiated introduction of amendments and additions into it. At the administrative backstage a draft is being developed, which, if taken in its preliminary version will greatly deteriorate the Law, which, in the opinion of local and foreign experts if quite liberal and progressive.

Anyhow, we will proceed from the acting Law and will touch on two problems. First of all, Article 9 "Procedure for Submitting and Discussing an Enquiry" should be considered, Clause 7 of which says:

"Answer to written enquiry is provided within the following timeframes:

1) If the information requested has not been published, its copy is provided to the enquirer within 5 days after the receipt of the enquiry;

2) if the information requested has been published, the data on the vehicle, the place and the date of the publications are provided to the enquirer within 5 days aft the enquiry receipt".

We believe that the timeframes specified in subcluse 2 are artificial-ly prolonged: the information holder hardly needs 5 days to find out where and when it was published. In our opinion, the enquiry about the information published can also be verbal. For this reason we propose the two following changes in Article 9. Firstly, in the part that refers to oral enquiry, subclause 4 must be added and that party will look as follows:

"The author of the written enquiry must specify his/her first and last name. The answer to the verbal enquiry is provided if:

1) the provision of information wanted can prevent the threat to state and public security, public order, health and morals of the society, rights and liberties of others, environment, property of citizens;

2) it is necessary to clarify the availability of the appropriate information with the information holder;

3) it is necessary to clarify with the information owner the procedure for discussing written enquiries;

4) *it is necessary to find out the details of the vehicle, place and ate of publication of the information in question"*.

We also recommend that subclause 2 of Clause 7 of Article 9 be nar-rated in the following edition: "*2) if the information requested in the written enquiry is published, the data on the vehicle, place and date of this publication are presented to the enquirer immediately"*.

Another problem of the Law is the lack of a provision on the Defender of the right to freedom of information. It should be noted that at certain stages of the debate around the draft of the Law this Article existed but was eliminated later. We think it necessary to return to the question and include the provision on the Defender of the right to information with a definition of the functions. In partic-

ular, the defender can be addressed before the litigation, when the right to information was violated, when a citizen was unfairly refused in any information with a reference to state or official secret. The defender must possess the necessary authority to penalize those who violated the right to freedom of information or to start court proceedings on the matter.

3. RA Law "On Television and Radio"

Two options are possible for the improvement of this Law. The first — the development of a new draft law, which would be called not "On Television and Radio", but "On TV and Radio Broadcasting" and would regulate only the private broadcasting. A separate law could have been developed for the public broadcasting. However, this approach calls for much effort and time. Currently another way is more topical — the improvement of the acting law. Considering the fact that the main problem here is to ensure the independence of two regulating bodies of the broadcast sphere — the Council of Public TV and Radio Company and the National Commission on Television and Radio, our recommendations refer to introducing amendments and additions into these very articles. Particularly since the amendments to Law, passed by the National Assembly on December 3, 2003, did not solve this issue: the provisions mentioned still do not follow the Recommendation of the CE Committee of Ministers R(2000)23 "On the independence and functions of regulatory bodies in the broadcasting sector".

The amendments of the Articles on the regulating bodies in the broadcast sphere are proposed here as a draft law. It should be noted that this document, developed jointly with other journalistic associations also includes amendments on the activities of the broadcasters during elections and referenda — taking into account the application of the Law during the election campaigns of 2003 in Armenia.

Law of the Republic of Armenia

On Introducing Amendments and Changes into the RA Law "On Television and Radio"

Article 1. The first and the second paragraphs of Article 11 of the RA Law "On Television and Radio" to be narrated in the following edition:

During the period since the announcement of the referenda and elections till the official start of the pre-election promotion, as stipulated by the law, as well as during the pre-election promotion, the TV and radio programs are broadcast in accordance with legislation on referenda and elections.

During the period from the day of elections announcement till the official start of the pre-election promotion broadcasting of political advertising by broadcasters is prohibited. The broadcasting of politely or other promotional materials as information, editorial, documentary, authorship or other programs is prohibited. During pre-election promotion the broadcasting of such programs on television should be accompanied by permanent note on the screen: "political advertising" or "pre-election promotion material", and in case of a radio program a reminder about it should be made at least three times during the program.

Article 2. Paragraphs 1-4 in Article 25 to be narrated as follows:

The administrative body of Public Television and Radio Company is the Council of Public TV and Radio Company (further referred to as the Council).

The Council is made up of 7 people, appointed by the RA President: four out of candidates presented by parties that gained over 5% of votes at elections to the National Assembly, considering the proportions of Parliament factions and groups; three out of the candidates, nominated by public associations from the spheres of information, science, education, culture, human rights.

The Council is appointed for 6 years' time. The Chairman and the members of the Council work as volunteers, retaining their current positions (employment) and are compensated for the participation in the activities of the Council*. The Council of the first composition of the Council are appointed for terms stipulated in the transitional provisions of this Law (Article 59).

Article 3. Clause "c" in Part 6 of Article 29 of the Law to be narrated as follows:

c) founders, shareholders and employees of commercial companies and associations, giving the output of TV and radio and/or advertising production.*

Article 4. After Paragraph 6 of Article 29 the following paragraph to be added:

A Council member has no right to be a candidate in elections, to participate in pre-election promotion or exercise political activity in any other way.

Article 5. Paragraph 2 of Article 31 of the Law to be annulled.

Article 6. First paragraph of Article 39 to be narrated as follows:

* **Note:** The acting Law, contrary to reason, stipulates that the members of the Council of Public TV and Radio Company work on a paid basis and cannot be otherwise employed, while members of the National Commission on Television and Radio work as volunteers. The present draft law aims at correcting this problem.

* **Note:** The addition, stipulated by Article 3 of the draft law proposed refers to the member of the Council of Public TV and Radio Company. This thing is that in the 6th part of Article 29 of the Law in force, where a provision is made as to who cannot be a member of this regulatory body, clause (c) says: "c) heads of public and private TV and radio companies". In our opinion, the number of persons not to be involved in the Council must be somewhat expanded.

National Commission is comprised of 9 members appointed by the President of the Republic of Armenia for 6 years. At the same time five of the members are appointed out of candidates nominated by parties that scored over 5% of votes at the elections to the National Assembly, considering the proportions of Parliament factions and groups; four are appointed out of the candidates nominated by the public associations of information sphere. The terms of service of the members of the first composition of the National Commission are stipulated by the transitional provisions of this law (Article 59).

Article 7. The fifth paragraph of Article 41 of the Law to be narrated as follows:

The Chairman and the members of the National Commission are remunerated for their work. The size of their salaries as well as the salaries of the staff, as formed by the Statutes of the National Commission, is determined by a procedure, stipulated by the legislation of the Republic of Armenia, The Chairman and the members of the National Commission when performing their duties are not to engage in other paid work, except teaching, creative and scientific activities.

Article 8. Paragraph 13 of Article 59 of the Law to be narrated as follows:

Terms of service for the members of the first Council composition are as follows:

3 members - 2 years,
3 members — 4 years,
1 member — 6 years.

Article 9. Paragraphs 15 and 16 to be added to Article 59 of the Law:

After this Law comes into force a new composition of the Council of Public Television and Radio Company is formed — in compliance with the procedure and terms stipulated by this Law.

After this Law comes into force a new composition of the National Commission is formed — in compliance with the procedure and terms stipulated by this Law.

4. Articles 135, 136 and 318 of the RA Criminal Code*

Our recommendation is as follows: following the example of other countries the authorities of Armenia must abolish criminal persecution for libel and insult, that is to annul Articles 135,136 and 318 of the RA Criminal Code, and sustain from their application until an appropriate legal act is adopted - similarly to a number of other states where such provisions still exist.

* **Note.** The recommendations were ready for publication, when the National Assembly of Armenia in June 2004 passed RA Law “On Introducing Amendments and Additions to the RA Criminal Code”, in accordance with which Articles 135, 136 and 318 referring to responsibility for libel and insult were changed. This, however, did not solve the problem. In fact, only the punishments were reconsidered, the general approaches still remain. Meanwhile, the responsibility for libel and insult must be decriminalized.

GEORGIA

1. General legislation regulating mass media

For present the main legislative act in the field of mass-media in Georgia is the law on “Press and other Information means” adopted on August 10, 1991.

During the research it was revealed that Law on Press and other Means of Mass Media of 1991 that regulates principle aspects of media and journalists' activities does not meet the requirements of the present day. The law does not provide legal guarantees necessary for journalists' independent activities. The major recommendations that has to be made for general legislation regulating mass media is that Law on Press and other Means of Mass Media has to be replaced by the draft law on Freedom of Expression and Press.

Adoption of the mentioned draft law will entail resolving of certain problems, including: definitions stipulated in Article 1 of the draft law will enable court authorities to interpret properly the basic terms related to the freedom of expression and press. As the practice demonstrates that improper interpretation of definitions is a problem not only for Georgia but also for certain post soviet countries. Discretion for law-enforcement organs in this relation may pose threat to freedom of expression.

Article 2 of the draft law — providing that the law should be interpreted in line with the Convention on Protection on Human Rights and Fundamental Freedoms and the jurisprudence of the ECHR — can play a crucial role for implementation of European Standards in Georgia. Such a formulation is a innovation not only for Georgia but also for the Western European States and thus it should be considered a progressive step.

Most countries of Europe have already decriminalized defamation. The draft law provides such possibility - when the law is valid article 148 of the Criminal Code of Georgia - specifying criminal responsibility for defamation - is void. Having entered into force the draft law article 18.5 of the Law on State Secret will be also void as the latter is rather obscure and stipulates responsibility of the responsible edi-

tor-in-chief (if via mass media the state security or international relations of Georgia were damaged and life of persons were threatened).

2. Regulation of Broadcasting

The situation is almost the same in the field of broadcasting regulation. The Law on Communications and Post should be replaced by a new draft Law on Broadcasting. If the new law is adopted a legal framework for regulation of broadcasting will be introduced providing independent and impartial activities (financial and political) of the bodies regulating broadcasting and transparent process of licensing of TV/radio companies in the conditions of fair competition.

The entry into force of the draft law is important because of the fact that it may promote reorganization of State Television to a public one; the latter is one of the principle requirements of the CoE.

Though the draft law was expertised more than once there may emerge certain essential minor comments, namely: article 54 deals accuracy, right to correct and deny. Paragraph 1 is drafted as follows: "The owner of the broadcasting license is to take all measures to ensure accuracy of facts referred to in the programs and to correct mistakes in due time." It is necessary to add term "possible" or "reasonable" between the words "all measures" as the existing wording will pose serious problems for the companies. In this relation parallels may be drawn with article 17 of draft law on Freedom of Expression and Press that is drafted as follows: "the Media has to take all necessary measures to ensure accuracy of published facts and to correct mistakes in due time". Reasonable measures are referred to in art. 20 of draft law that releases from responsibility for dissemination inaccurate information, namely: a person is free from responsibility if he/she took reasonable measures to check accuracy of a fact but could not avoid mistake."

The same remark should be made to article 57 of the draft law on broadcasting that is drafted as follows: The owner of broadcasting license has to ensure to present all basic standpoints concerning important events without discrimination of any opinion or grouping". It is recommended to add word "within the limits of possibility" or "within the limits of reasonability" after the word "ensure". It

is also recommended to change paragraph 2 of article 57 providing: "The owner of broadcasting license has to ensure accurate and fair presentation of facts, differentiate clearly fact and commentary and identify an author of opinion". Under the wording, that the norm is imperative. Taking into note that it is not always possible to differentiate fact from commentaries, it seems unjustified to oblige the broadcaster to do so in any case. As an example we can refer article 5.4 (Standards and Burden of Evidence) of the draft law on Freedom of Expression and Mass Media specifying: "while considering the status of evidence referred to in the statement any reasonable doubt that is impossible to prove in accordance with law should be deemed as opinion and not a fact." The wording of the aforementioned provision demonstrates that it is not always possible to differentiate "opinion" and "fact".

Article 3 of draft law provides list of legal acts regulating broadcasting. Paragraph 2 of article 3 is drafted as follows: "legal acts regulating broadcasting should be interpreted in line with Convention on Protection on Human Rights and Fundamental Freedoms and other international legal instruments obligatory for Georgia."

The aforementioned sentence should be drafted as follows: "legal acts regulating broadcasting should be interpreted in line with Convention on Protection on Human Rights and Fundamental Freedoms, case law of ECHR and ..." such wording will be reflected positively on follow-up practice for two reasons:

- a) It is obvious that Georgian judges always "have difficulties" to use case law of ECHR. This problem may be solved by reference to case law in the law;
- b) The ECHR ruled on dozens of cases concerning specific issues of broadcasting. These judgments encompass important legal standards developing alongside the scientific technological progress.

3. Civil Code

The following recommendation may be drown with regard to the Civil Code of Georgia: Article 18.2 of the Code provides: "A person is entitled to demand in court the refutation of *data* defaming his

honour, dignity, confidentiality of personal life, inviolability of the person, or business, reputation unless the disseminator of such information proves that it is true. The same procedure applies in the case of an incomplete publication of factual information if it defames the person's honour, dignity, and business reputation."

The problem in this case is term "*data*" as the Georgian word "data" may be interpreted broadly and encompasses information in general, e.i. on the one hand ideas and opinions and on the other hand, facts. The ambiguity of the word "data" was the reason of inconsistent practice of Georgian courts. Some judges interpret the term as facts, while others read it broadly and consider that the term encompasses as facts as ideas and opinions. The latter approach constitutes a problem as the judge can rule to refute not only facts but ideas and opinions also. (And this is rather spread practice for Georgian courts.) Such interpretation of the term is unacceptable and constitutes grave breach of freedom of expression.

To deal this problem the term "data" should be replaced with the term "facts" that will prevent and misunderstanding and serve as a basis of consistent practice.

The other recommendation with regard to the Civil Code is the following: The courts often impose as a sanction apologizing to the persons having disseminated information, basically journalists. Georgian legislation does not provide such sanction (the institute of apologizing was provided by the Civil Code of Soviet Georgia of 1964). The freedom of expression encompasses not only the right of people to acquire, have or disseminate information or opinion, but also right not to express opinion at all. Thus to make a person (journalist) apologize is a grave breach of freedom of expression. Furthermore such sanction is not provided by the law. The problem may be solved by adding to article 18 of the Code the following sentence: "It is prohibited to impose any sanction for dissemination of facts but those provided by law."

4. Criminal Code

As it was mentioned above, article 320 of the Criminal Code provides possibility of criminal liability of journalists (as well as any private person) for disclosure of state secret. Under the practice of European countries responsibility for disclosure of state secret may be imposed on persons who are obliged to protect such secret by law. Thus to meet the European standards article 313 of the Criminal Code of Georgia should be amended and the words "to whom it was opened" should be deleted in article 313.1. Such amendment can exclude criminal liability of other persons but obliged by the law.

As for the criminal liability for defamation, we consider that article 148 of the Criminal Code should be invalidated. As it was admitted above entry into force of draft Law on Freedom of Expression and Press will remove this problem.

5. Criminal Procedural Code

Under the Criminal Procedural Code audio/video recorded by a private person or journalists is not evidence. Therefore it is necessary to make amendments to the Code: the Video/audio recorded by a private person or journalist may serve as evidence if the record or dissemination of such record does not violate personal privacy or inviolability of a person/persons. If person does not expect that such record could be made it is prohibited to acknowledge it as an evidence. The aforementioned is without prejudice to the records that reflects corruptive and illegal activities of public officials. Such approach will give a broad avenue to development of independent journalistic inquiry that is an effective mean of public control on state officials.

6. Administrative Procedural Code

The practice demonstrates that court proceedings on refusal to render information usually are protracted in time and last 6-8 months that devaluates the mechanism of appeal in such cases. We consider that a new article 28 should be added to the Code.

"1.The court will consider and rule on complaint on refusal to render information (appeal) within 15 days after the complaint (appeal) was file.

2. The decision shall be appealed within 12 days after the decision was delivered".

ON THE VIOLATIONS OF THE RIGHTS OF JOURNALISTS AND MEDIA AFTER THE ACCESSION OF THE COUNTRIES OF SOUTH CAUCASUS TO THE COUNCIL OF EUROPE

AZERBAIJAN

The present report aims to thrash out the situation around observance of rights of journalists and mass media in Azerbaijan after country's joining the Council of Europe, draws a parallel between judicial practice in Azerbaijan and principles of European legal procedure. Research into the most malicious facts of these rights' infringement will help us fuller depict the situation in this area.

Contribution to the report were data obtained as a result of permanent monitoring of journalistic organisations of the country, particularly, the Journalists' Rights Protection Committee "RUH".

Under the survey, 218 cases of the infringement of rights of journalists and mass media were established in Azerbaijan in 2001. To judge by the results of monitoring, the year of 2002 proved to be noticeably less strained - 130 cases. However, the situation went from bad to worse in 2003, the year of the Presidential elections. In 350 cases mass media and journalists proved to be involved in conflict, following which their rights were infringed.

Over these three years, printed mass media were made answerable much more often than electronic mass media. Involved in these conflicts in 2001 were 48 mass media (41 newspapers); 25 (22) in 2002; 44 (38 newspapers) in 2003.

The most affected in 2001 were newspapers "Yeni Musavat" and "Hurriyet" (1/4 of delinquencies); in 2002 and 2003 - the same newspapers plus "Azadlyg".

Even worse, over this same period, 13 news-stalls owned by printed matter distribution firm "Gaya" were illegally pulled down (12 news-stalls in 2001, 13 in 2003).

The survey is indicative that a greater portion of delinquencies falls on Baku with major part of mass media being concentrated. As for regional newspapers, conflicts with state bodies were typical in 2001 for independent publications "Masally Kheberleri" (now "Jenub Kheberleri") and "Mingechevir ishiglari". The years of 2002 and 2003 showed further expansion of the scope of delinquencies: the same conflicts with the involvement of regional publications took place, besides Masally and Mingechevir, in Nakhchivan, Sumgait, Lenkaran, Salyan, Gyandja, Qazakh, Qabala and Yardymly.

It should be noted that the regional press of Azerbaijan is developed poorly. In most regions, newspapers are issued once a month, in rare cases - twice a month with circulation of not more than 500 copies. Scores of them are printed organs of local executive power, publishing largely official reports and avoiding criticism.

Physical violence and psychological pressure

Facts of physical violence and psychological pressure have mainly been established conformably to representatives of opposition or critically minded mass media. As a rule, these excesses take place straight after the publication of materials, unmasking illegal actions of officials or representatives of business circles.

The most widely spread form of psychological pressure is an intimidation of journalists. Following the issue of a critical materials, "unidentified people" call to the editorial office, or sometimes catch authors of these publications in the street and threaten them, their relations, with physical reprisals.

In 2001, 5 cases of psychological pressure on mass media were fixed; in 2002 - 3. In 2003, 39 journalists were threatened by danger, including assassination.

For instance, on 12 January 2003 unknown persons came to "Azadlyg" newspaper correspondent Khalyg Bagadur and threatened to kill him. The journalists explained this by his article titled "Erdogan to play football for another 15 years". The article harshly criticised the authorities.

On 30 May 2003, within the precincts of the Parliament MP Ahad Abiyev made threats against "Politika" newspaper correspondent Parviz Gashimogly.

Besides psychological, a physical strength was applied against journalists too. While on duty, 46 journalists ran physical violence in 2001; 37 in 2002 and 133 in 2003. Of interest is the fact that in 2001 and 2003 most delinquencies occurred during unsanctioned actions of various organisations. While visiting the precise spot where events were going on, mass media representatives in an attempt to collect information faced physical counteraction from policeman and people in civvies. As a result, journalists were barred from meeting participants, forcibly evicted from the place. There were 38 cases in 2001, 18 in 2002.

The same is true of 2003.

The year of 2003 saw the Presidential elections in Azerbaijan. As compared with previous years, the number of delinquencies noticeably increased. Thus, during the pre-election campaign 91 journalists were subjected to violence.

On 15-16 October, a violence was applied against 58 mass media representatives. Most of them were beaten by policemen and "unidentified people in civvies". A staggering fact that none of perpetrators has so far been brought to trial.

Note that tensions were about to happen from the beginning of 2003. As far back as on 13 January, during an action of protest of Bailovo district residents near a building of executive power of Baku, the police took a camera from "Uch nogta" newspaper reporter Shahla Abusattar and tore a film to pieces. Another reporter of the same newspaper Rasim Madat demanded to give the camera back but also faced violence and insult. After the policemen had done away with the film, they returned the camera to the reporter.

On 30 April 2003, "unidentified people in civvies" beat mercilessly a "Khagani" firm employee in charge of newspaper sale and tore 26 copies of the opposition "Yeni Musavat" and "Hurriyet" newspapers.

On 4 May 2003, at 21.30 a group of 20-30 burst into "Yeni Musavat" editorial office. Assaulters broke down doors, windows and equipment, beat deputy editor-in-chief Gabil Abbasogly, collaborators Salim Azizogly, Khalid Kazimly and Elshad Pashasoy. Mobile telephones were taken away, mini-ATE wrecked. Outrages lasted for 15-20 minutes. Note that Sabail district policemen managed to arrest several assaulters.

Editor-in-chief of "Yeni Musavat" Rauf Arifogly expressed his opinion on the fact as saying that 3 days before the event he officially had notified a head of Sabail district police department of the upcoming assault. However, a police post at the entrance to "Musavat" party headquarters, where the editorial office was located, had been removed 3 hours before the assault. Hence, the editor-in-chief maintains, the provocation was carried out by the authorities. In his words, as a result of massacre the editorial office suffered damage worth \$3000.

Before the assault, head of the thugs Faramaz Allahverdiyev in a telephone conversation with the newspaper collaborators threatened to kill the editor-in-chief of "Yeni Musavat" and other reporters. He was infuriated by a publication in the newspaper that humiliated, as viewed by Allahverdiyev, his honour and dignity. Besides, on 20 May 2003 Faramaz Allahverdiyev went on phoning the editorial office and threatening the collaborators.

On 24 May 2003, MP and member of the ruling Yeni Azerbaijan Party Ahad Abiyev insulted Chairman of the PPFA, MP Ali Kerimli, during the session of the Parliament. Protesting against this, PPFA representatives decided to picket Ahad Abiyev's home. A skirmish took place between participants of the unsanctioned action and the police. During the dispersal of the picket, law-enforcement officers applied physical strength against several mass media representatives. Including Azer Ahmedov, Sahib Islamov ("Azadlyg" newspaper), Shafayat Saleh ("Turan" information agency).

On 27 May, upwards of 100 members of the PPFA-reformers tried to hold a regular unsanctioned picket in front of the Parliament. They demanded from the Parliamentary majority to put an end to insulting opposition leaders and take disciplinary measures against MP Ahad Abiyev. A skirmish arose between the police and pickets again, insulted and beaten by the police were journalists, watching this

action, including Abbasali Pustamly, Ruslan Bashirov, Ramiz Nadjafly, Ali Rza ("Azadlyg"), Elshad Pashasoy ("Yeni Musavat"), Alim Huseynov ("Aydin sema"), Parviz Gashimly ("Politika"), Ramil Huseynov ("Bilik dunyasy" information agency), Tapdyg Farkhadogly ("Turan" information agency).

On 3 June 2003, in front of the Parliament the police and unknown persons in civvies applied a physical strength against journalists Parviz Gashimly ("Politika"), Natig Zeynalov ("Azadlyg" radio), Nidjat Dahlar and Tahir Tagiyev ("Hurriyet"), engaged in collecting information about an unsanctioned meeting of political parties-members of the Opposition Coordination Center.

On 11 July 2003, driver of Salyan region prosecutor David Huseynov assaulted "Hurriyet" newspaper correspondent Vidadi Bayramov. Huseynov tried to crush Bayramov to death, however, by sheer luck, the correspondent succeeded in dodging. "Hurriyet" reported that the unlucky driver went on threatening the correspondent. The editors link this assault with the publication in the newspaper a series of articles by Bayramov about unseemly actions of regional law-enforcement bodies.

One of the forms of physical violence is withdrawal and spoiling of editorial property, technical means and equipment, journalist cards. It is primarily officers of law-enforcement bodies who commit violence against mass media contributors. Thus, in 2001 they took the lead in 17 cases, breaking down 5 TV-cameras, 6 dictaphones, 2 cameras and 1 video-cassette.

Established in 2002 were 8 facts. 2 dictaphones and 2 cameras were broken down, 1 dictaphone withdrawn. Policemen took by force and tore to piece 3 journalist cards.

In 2003, policemen, and in some cases people in civvies, withdrew and broke 4 dictaphones, 6 cameras, 8 video cameras and 2 mobile telephones owned by mass media editors.

Detention of journalists by law-enforcement bodies

In 2001, 17 journalists on duty were illegally detained. They were basically detained when collecting information about unendorsed

meetings and pickets, held by separate public-political organisations. In 2001, 14 cases were identified: 11 mass media contributors were warned, and 3 journalists arrested and later punished administratively as a result of performing their duties during a meeting-procession of the Democratic Party of Azerbaijan on 21 April 2003.

In 2002, illegally detained were 10 journalists.

The next year of 2003 proved to record-breaking: 60 mass media representatives on duty were detained. Nearly half of the cases (28 detentions) was attributable to journalists' attempt to collect information about unproved mass actions held by public and political organisations of the country. The detainees were brought to police-office and in several hours, after stepping in journalist organisations, such as "Yeni Nesil" and "RUH", were released without giving any explanations nor presenting apologies.

Let us consider some cases. On 4 May 2003 contributor of "Yeni Musavat" Mahir Mamedly was detained in the town of Sumgait and brought by force to the 4th police-office. He was on detached duty in Sumgait to collect information about a meeting of opposition parties.

On 23 July 2003, Chairman of the Council of Azerbaijan Press Aflatun Amashov, Chairman of the Association of Azerbaijan Journalists "Yeni Nesil" Arif Aliyev, member of the Press Council Gunduz Tahirly, editor-in-chief of "Yeni Musavat" Rauf Arifogly, director of information agency "Turan" Mehman Aliyev and editor-in-chief of "Tezadlar" Asif Merzili were detained by traffic inspectors, brought without motives to the 37th police-office of Khatai district and kept there for an hour. Later on, Home Secretary of the country termed this as provocation arranged by the "third party" and instructed to investigate the fact. However, no headway has been made in the matter so far.

There was a good many facts of the punishment of journalists in an administrative way. For example, "Hurriyet" correspondent Ikram Rafigogly was detained on 25 May in Gyandja by local police for 5 days. Editor-in-chief of the newspaper Aydin Guliyev is sure that the arrest is attributable to the publication of critical article, which exposed illegitimate action of Gyandja leaders.

During the Presidential elections and unsanctioned actions of the opposition on 15-16 October 2003, 22 mass media contributors were punished administratively, most of them arrested for 15 days. Note that these arrests were accompanied by gross procedural violations. Suffice it to say that "Avropa" newspaper correspondent Azer Garachenly suddenly disappeared at the height of these developments. No information about him came within a week, and all his relatives and friends were in the dark. All the investigating bodies denied any information about this man, even about his arrest. Only after international organisations and journalist organisations, such as "Yeni Nesil", Press Council, Committee for Journalists Rights Protection "RUH" intervened in the affair, it turned out that Garachenly was arrested. He was released on the seventh day. In his words, all these days he had been kept in the solitary confident cell of Binagady district police department of Baku.

Infringement of the right to information acquisition and dissemination

Under the Law of the Azerbaijan Republic "On mass Media", journalists are entitled to obtain operative and reliable information about economic, political, social and public situation in society, activities of state bodies, municipalities, institutions, enterprises and organisations, public associations, political parties, functionaries. State bodies, municipalities, institutions, enterprises and organisations, public associations, political parties and functionaries shall provide information about their activities on the basis of mass media inquiries, as well as through carrying on press-conferences, etc. upon presentation of editorial certificate, journalists will be entitled to stay in natural calamity areas and catastrophes, meetings and demonstrations.

Unfortunately, some officials prefer to act contrary to the Law. They impede collection of information by journalists, decline from responding to their inquiries, do not let them attend various events and even evict mass media contributors from their premises.

One of such violations is a restriction on the right to entry to objects. In particular, journalist association identified 4 cases in 2001.

Another form of restriction is an infringement of the right to attend events. Sometimes, events, arranged by official, social and political

structures, may be attended by mass media and journalists, who back and advocate views of organisers of these events. On the one hand, there is an infringement of the rights of journalists, representing certain publications and TV-channels to obtaining information, on the other, society is provided with unilateral information about current developments.

The number of such violations was especially great in 2003. For example, on 27 May member of the Yeni Azerbaijan Part, businessman Farkhad Huseynov, owing to problems in his business, held a press conference at the Baku Press Club. In doing so, Huseynov banned "Yeni Musavat" contributors to attend the press conference.

On 30 May 2003, "525-gazet" correspondent Ilhama Gasymlly was not allowed to attend a press-conference of the head of Frontier Troops of the Azerbaijan, Lieutenant-General Elchin Guliyev. He addressed her as saying: "We did not invite you to come here". In reply, Gasymlly referred to respective provisions of the Law "On Mass Media" on the right of journalists to obtain an information, however, her words produced no desirable effect.

During the Presidential elections of 15 October 2003, some mass media representatives were not allowed to the polling stations, among them Firuddin Guliyev ("Garbin sesi"), Aslan Abdullayev ("Molla Nasreddin"), Matanet Aliyeva ("Impuls"), Iynulla Garayev ("Fadai") Rashad Suleymanov ("Hafta ichi") etc.

On 17 October and 4 November 2003, "Azadlyg" newspaper contributor Boyukaga Agayev was not allowed to attend a session of Milli Majlis. The press-service told him they been instructed to do that "from above".

In fact, journalists have to very often hear this phrase. Many public officials are prohibited to deliver information on journalists' inquiry without special permission "from above". Most frequently mass media representatives face this problem when dealing with law-enforcement and public health structures. As a results of protracted agreeing in the corridors of power an information inquired losses its topicality, reaches a consumer untimely. It is no mere coincidence that some mass media means provide, through no fault of them, inaccurate, sometimes distorted information. For lack of direct access to

the source of information, journalists have to use unverified facts, apply to "reliable sources", which in fact prove to be not fully competent or honest.

Sometimes, state organizations go so far that deprive journalists of accreditation for criticism against them. Thus, in 2001 the Parliament arbitrarily deprived "Aliller" correspondent Rey Kerimoglu of accreditation. In so doing, the supreme law-making body of the country ignored a clause of Article 50 of the Law "On Mass Media", which says that "organization is entitled to deprive a journalist of the right to accreditation" only if the violation of accreditation regulations, as well as dissemination of information, humiliating honor and dignity of the accrediting organization or distorted or contrary to the reality, has been confirmed by court decision.

Another type of delinquencies in the sphere are cases related to putting obstacles in disseminating mass media production or its confiscation. Under a new wording of Article 27 of the Law "On Mass Media", it is the court only to decide on the withdrawal of circulation of already published and distributed for sales mass media production. In doing so, it has still to be proved that the information may damage integrity and security of the state or contains elements of pornography.

The monitoring found that there were 20 cases in 2001, 18 in 2002 and 60 in 2003, where the authorities imposed a prohibition on the distribution of some newspapers or their parts on certain territories. None of Article 27 requirements were complied with.

As a result of self-willed actions of officials, "Yeni Musavat" suffered in 2003 damage worth 12 million manats. Opposition mass media faced greatest ever problems when publishing materials about the health of former President of Azerbaijan Heydar Aliyev. Resultant damage incurred to "Milli Yol", "Milliyet" and "Tezadlar" newspaper amounted to 18,500,000, 2,520,000 and 90,000 manats respectively.

There is a great many cases of the confiscation of a part of the circulation by regional or town authorities. For functionaries cannot reconcile themselves to criticism against them, give orders to withdraw from sales publications that place such materials.

Resolution # 428 (1970) of the Parliamentary Assembly of the Council of Europe says that the right to the freedom of expression "implies the right to search, obtain, transfer, publish or disseminate information of public interest and the press' mission is to disseminate general and complete information regarding socially significant matters.

Part 1 of Article 10 of the Convention, among elements constituting the right to the freedom of expression, provides for "the freedom of obtaining and disseminating information and ideas. The freedom of obtaining information and ideas stipulates the right to their collection and search in all the possible sources. Note that the freedom of dissemination of this information and ideas is conducive to carrying out activities of mass media aimed at bringing them to the notice of public opinion. The European Court also interprets this provision as the right of public to obtaining information.

Under Article 50 of the Constitution of the Azerbaijan Republic, each person has the right to freely search, obtain, transfer, produce and disseminate information on any legal basis. Under the Law, state bodies, organizations, enterprises shall carry out their activity on the principles of maximum openness. Thus, provision of information is not the right, it is the duty of functionaries. In fact, this principle is often violated by representatives of the authorities. Concealment of information manifests itself in ungrounded refusal from its delivery. Besides, there are facts of restriction of the access to documents and materials, unrelated to the information of restricted dissemination, as well as prohibition of employees of offices and organizations to provide journalists with socially important information.

The European Court is also unanimous in the fact that local judicial bodies shall secure the right of public to obtaining information about current developments. Unfortunately, the given recommendation of the European Court is not taken into consideration in Azerbaijan properly. The main reason is that the judicial corps is not independent and that governmental officials are intolerant of criticism and abuse their official powers to pressure the press.

Economic pressure on mass media

Prices for paper sharply rose before the last Parliamentary elections of November 2000. Whereas a price per ton of paper comprised \$400-500 in mid-year, in autumn it soared to \$900-950 and remained unaltered till spring 2001. This can hardly be explained by economic reasons only, since, according to the State Customs Committee, about 3,000 tons of paper was brought to Azerbaijan in 2000, which fully met aggregate needs of all the periodicals of the country. The problem was that export of the paper (storing and selling included) is under strict control of government official, including the Customs Committee. Therefore, the journalists had every reason to think that the deficit was created deliberately. The journalists protested, picket to the governmental offices, carried on journalists investigations, published critical materials. The situation changed from bad to better, prices went down but only after pre- and post-election emotions faded.

However, another problem sprang up. With entry of the new Tax Code into effect since 1 January 2011, the paper being exported to the country, largely, from Russia, became a subject of double taxation. This resulted in the regular crisis of printed matter. In consequence of this, in 2001 eight issues of "Muhalifat", three of "Tezadlar", three of "Sensatia" failed to be published. For lack of paper, "Azadlyg" from 31 May to 11 September, and "Hurriyet" from 23 July to 23 August had to suspend their activities.

Note that the double taxation on paper was annulled in 2002 only.

Another method of economic pressure on mass media is the violation of terms of agreements concluded with editorial offices by governmental organizations. Cases of this kind occur where publishing houses willfully decline from printing separate issues. In 2001, there were 6 cases of this kind, in 2002 — 3. For example, owing to paper deficit the publishing house "Azerbaijan" did not print "Azadlyg", "Yeni Musavat", "Hurriyet", "Baki Kheber", "Yeni Zaman" and "Novoye Vremya". The paper was not enough for these opposition publications.

It should be noted that courts play a marked role in aggravating economic conditions of many mass media, in narrowing country's media

market. In imposing huge fines on editors and journalists, courts drive mass media to bankruptcy, make them hostages of governmental structures.

Judicial practice and rights of journalists, mass media

Over the past 3 years, the number of actions having been brought against journalists and mass media has sharply increased. Overwhelming majority of the actions has been satisfied by courts. As a rule, "victims of mass media" are not ordinary people, they represent executive power, deputies of different levels, mayors, other top officials of local self-government bodies, senior officials of law-enforcement, etc. Suffice it to say that in 2001 and 2002 a share of "ordinary" citizens, who brought actions against mass media on protection of honor, dignity and business reputation, comprised less than 2%.

As is known, the European Court makes it incumbent upon each public figure to be ready for heightened and even partial attention on the part of mass media. A great quantity of suits from politicians, public figures and functionaries is illustrative of their unpreparedness to executing public mission, intolerance of criticism, free-thinking and pluralism. Worthy of note is a statement of the European Court that Article 10 of the Convention is protective of not only "information or ideas, which are received as well-disposed or assessed as innocuous or disregarded at all, but also these that insult, scandalize or cause anxiety of the state or a part of the population. These are requirements of pluralism, tolerance and breadth of views, without which the democratic society cannot exist".

In the case "Lingens against Austria", the Court pointed out that "the freedom of press for the public is the best means of defining and shaping views on ideas and approaches of political figures... Limits of acceptable criticism directed against a political figure is broader than criticism against a private person. Unlike the latter, the former inevitably and deliberately places himself in a situation where his each word and action is a subject of careful investigation both by journalists and the broad public". Further, the Court points out that clauses of the part 2, Article 10 of the Convention securing the protection of separate persons' reputation, extend to political figures as well. In case of the application of the clauses to political figures, such a protection is to be agreed with "interests of society when discussing political problems".

Besides, the Court specifies that application of "sanctions against a journalist, criticizing a political figure, is tantamount to a censorship, the fact that may keep him back from criticism in the future... Journalists would prefer to restrain from taking part in public debates over society's problems. In doing so, the sanction would impede press to cope with its task as distributor of information and defender of public interests".

This is to say that limits of acceptable criticism with respect to political figure are broader than those in respect of private person. In turn, requirements arising from protection of functionaries' reputation are to be correlated with open debates on political issues of public interest.

Acquaintance with the practical activity of Azerbaijani courts regarding protection of honor, dignity and business reputation of politicians and top officials is illustrative that these courts, on the one hand, make no distinctions between private persons and functionaries, and provide the latter with heightened, as compared with ordinary citizens, protection, on the other.

In 2001, governmental officials, public and political figures, separate physical and legal entities brought 48 actions against 28 mass media organs. Claimants demanded from journalists and editors to compensate for moral and material damage worth 2 billion 97 million manats. There were 17 cases, where public servants demanded to punish media (imposition of fine, closing of newspapers, arrest of journalists), 9 cases, where heads of political organizations and MPs, as well as 6 cases, where representatives of commercial structures and businessmen brought actions against mass media and journalists.

Judicial practices of developed countries are indicative that a greater portion or claims against journalists fall to the share of workers of culture and art, sportsmen, who enjoy wide popularity in society. Despite a great number of scandals around popular figures in Azerbaijan, it comes to legal proceedings rarely. Suffice it to say that 3 trials took place in 2001.

Unlike previous years, there have been a great many legal proceedings with mass media or their representatives acting both as defendants and applicants. To compare, just 2 cases were registered in 1999 and 2000.

Account has also to be taken of the fact that in some cases journalists initiated legal proceedings against state structures and governmental officials due to impediments when performing official duties. In 2001, mass media representatives applied to courts twice, however, their claims were not satisfied.

Monitoring studies showed that in 2002 public servants, public and political figures, as well as separate legal and physical entities lodged 38 statements of claim against 16 printed mass media. All these statements were accepted for consideration, and legal proceedings over 19 cases took place with appropriate decisions adopted. Claimants demanded from them to compensate damage for infringed honor, dignity and business reputation amounting to 283 billion 168 million 520,000 manats. Court decisions provided for partial compliance with claims. Thus, mass media was fined for 350 million 200,000 manats. Public servants acted as claimants in 17 cases. Note that 9 legal proceedings were instituted by functionaries of political parties and MPs against journalists.

In the meanwhile, relations between journalists, on the one hand, and businessmen and workers of culture and art on the other, were in 2002 peaceful and tranquil. Judicial bodies seemed to tend towards protection of the freedoms of speech and press. It was no mere coincidence that none of newspapers was closed despite numerous demands to do that. As distinguished from previous years, none of journalists was imprisoned, except for 1 case, where a journalist was put on trial. Nevertheless, tensions in this sphere and certain "taboo" remained. Note that journalists thrice applied to courts in an attempt to reinstate, however, failed.

It has to be kept in mind that in the second half of 2002 the number of claims of governmental officials against journalists and mass media sharply rose. Since September that year, the dynamics of growth became evident. In October and November, governmental officials brought actions against journalists in well excess of these over the past three quarters. Where as there were 17 statements of claim against mass media over the past 9 months, it reached 21 in the last quarter only.

Of these 38 statements, 13 (each third) were against "Yeni Musavat" newspaper. As viewed by experts, the reason of such an intolerance

of governmental officials to "Yeni Musavat" is a harsh political opposition of the newspaper to the present authorities. From September to November 2002, courts accepted 12 statements of claim against this periodical. Most statements demanded to fine the newspaper and then close it down. Note that procedural requirements were originally violated when making statements of claim. In other words, judges had no right to accept these statements as such. Both physical and legal entities lodged statements of claim, which referred to Article 23 of the Civil Code on responsibility for infringement of honor and dignity. However, it is well-known that these notions, as distinct from business reputation, are particularly subjective and applicable to physical entities only. Courts also considered statements of top governmental officials on protection of business reputation, which is illegal, since they have no right to engage in business activity and uphold the reputation of the enterprise. Nevertheless, legal proceedings were held, decisions adopted as a rule, in favor of these officials. In doing so, courts fulfilled requirements of claimants and fined periodicals and their collaborators at huge sums.

It would be appropriate to recall that 40 cases were instituted in 2003 with 18 mass media means as defendants. As a whole, claimants demanded from defendants to compensate in the amount of 7 billion 417 million 500,000 manats. This same year 27 claims were considered. Courts imposed fines worth 1 billion 590 million 500,000 manats. Besides, two journalists were sentenced to forced labor for 1,5 years with 20% money stopped from monthly wages. These were contributors of "Etimad" newspaper Etibar Mansuroglu and Mehpara Shahtakhtinskaya. Two contributors of "Muhalfat" newspaper Rovshan Kabirly and Yashar Agazadeh were sentenced to comply with Articles 147.1 (Calumny) and 148 (Insult) of the Criminal Code of the Azerbaijan Republic for 5 months of imprisonment but later amnestied.

Like in the previous years, it was governmental officials who laid greater claims to mass media (19 claims). In 10 cases, court sittings took place through complaints of the representatives of political parties and deputies. Heads of commercial structures and businessman brought 3 actions against journalists. The same is true of the workers of culture and art, well-known sportsmen (3 actions).

Complexities of pre-election situation, and tense passions had their effect on mass media relations. Legal proceedings (5 cases) against mass of media reopened in 2003. Journalists twice applied to the court with a request to reinstate their rights, infringed by governmental officials, but their suits were not satisfied.

Putting mass media and journalists on trial by governmental officials

As has been noted above, a greater part of claims against mass media falls to the share of governmental officials. The practice shows that governmental officials face no difficulties in meeting their interests and punishing mass media in due course of law.

Let us consider one of the cases that had a wide public response.

The conflict between president of "Azeravtotransport" concern Huseyn Huseynov and "Avropa" newspaper started as far back as in August 2001. The reason of the conflict was an article titled "President of "Azeravtotransport" in international search", published in the newspaper. H.Huseynov considered the material to be slanderous and brought an action. Legal proceedings, which started on 14 September 2001, lasted for several months. The last time, the Supreme Court imposed a fine worth 189 million manats in favor of the claimant. The Court decreed to seize the property and banking account of the editorial staff. In the end, the newspaper had to cease its activity.

Two aspects of the case are worth attention. First, author of the material refers to official documents, whose copies were submitted to the court. Hence, the newspaper did not aim to slander or insult someone's dignity. However, the judicial body ignored this aspect. One more blatant violation of the legislation was admitted. Under Article 19 of the Law "On Mass media", still in effect in the reviewed period, a maximum fine to be imposed on the editorial staff as a compensation for moral and material damage could not exceed an amount of 3-month expenditures. Quoting "opinion of experts", the court defined this amount to make up 189 million manats, and confirmed a maximum fine. In doing so, the court ignored the fact that "experts" made their conclusion not on the basis of accounting documents of the defendant, but proceeding from financial costs of another printed matter that both by circulation and periodicity was well excess of "Avropa".

In imposed fines and bringing actions of this sort, it is possible to impoverish any printed matter in Azerbaijan, even the most prestigious, to say nothing of small newspapers. True motives of claimants-governmental officials are to give, a good lesson to the publisher, discourage him from criticism, incur a serious financial damage to obstinate editors and, finally, close the printed matter down. When considering the case "Tolstoy-Miloslavskiy against the United Kingdom" on exacting 1.5 million pounds for defamation of the prominent public figure, the European Court notes as follows: "The sum awarded is up 3 times from maximum size of compensation, ever awarded in England due to statements of claim, and no decision on awarding a comparable sum of compensation has since been adopted. Accordingly, when adjusted for the sum of compensation at the case of the application, as well as the lack of effective guarantees against exorbitantly large sums of compensation, the Court considers that the infringement of the rights of the applicant takes place to comply with Article 10".

Under the Azerbaijani legislation (Article 23 of the Civil Code of the Azerbaijan Republic), it is responsibility of the defendant, journalist or editors to prove compliance of the disseminated information with reality in cases on protection of honor, dignity and business reputation. A claimant, either a private person or governmental or public figure, should prove the fact of information spreading by person, against whom a claim has been put. If a mass media or a journalists, unwilling to disclose a source of information, cannot prove truthfulness of the disseminated information, and the court recognizes the information defaming, the claim is sure to be satisfied. The offender shall refute the information as contrary to the reality, and the court shall levy a fine for moral damage incurred. In doing so, courts often compel mass media to refute not only the false information but the one having been corroborated.

(For instance, the fact of the claimant conviction was reaffirmed in the court, but not for bribery, as the paper article said, but for abuse of power). Besides, "compliance with reality" is meant in practice in two aspects: compliance of the information about deed, event, etc. with reality (objectivity of the information), correctness, adequacy of the assessment of the fact. Thus, any defaming information, either in the form of fact or assessment, is to be refuted. An eloquent testimony are cases as follows.

Legal proceedings, took place in 2001 at the suit of mayor of baku H.Abotalibov against 6 mass media (newspapers "Bakinskiy bulvar", "Milletin sesi", "Ulus", "Yeni zaman", "Sharg" and "Alternativa").

An article "Will new booths be installed?" (newspaper "Ulus" of 24-25 February 2001) was the first material that stirred up mayor's anger. He applied to the Sabail court to decide on closing the newspaper, bringing action against journalist S.Shirinov. He succeeded partly. The court decided to suspend the newspaper for a month and publish a refutation. Like in other cases, procedural requirements were violated. First, the court transgressed the law by considering a statement of claim signed by unauthorized person. Second, under Article 62 of the Law "On Mass Media", newspaper "Ulus" could not have been made answerable, since the facts it referred to had earlier been published in "525 gazet" (article "New surprises from city hall" of 22 February 2001) and not refuted.

The conflict between the mayor and "Bakinskiy bulvar" newspaper cost to much for the latter. The court past passed a verdict of guilty to founder of the newspaper Elmar Huseynov under Articles 147, part 2, and 148 of the Criminal Code and sentenced him to 6 months of imprisonment, and a suspended sentence was passed with respect to editor-in-chief of the newspaper Bella Zakirova under the same Articles. A criminal case and search was instituted against Irada Huseynova, contributor of the newspaper.

At the moment, the Law "On Mass Media" envisages the right of journalist "to express his own views and assessments in the reports and materials signed by him and designed for dissemination. The freedom of opinion is secured in the Constitution of the Azerbaijan Republic, which says: "Nobody can be compelled to express his views and convictions or renounce them".

Nevertheless, nearly half of the conflicts regarding humiliation of honor, dignity and business reputation came as a result of improper definition of information nature of mass media materials, disputed by the parties. The point is about materials or facts, which cause the claimant's discontent (partial assessment), reliability or unreliability of which cannot be proved for objective reasons, for they relate to this sphere of convictions, preferences, views. Incapability of drawing distinction between the fact and the opinion of this fact with refer-

ence to mass media, description of the event and its assessment results in the fact that during information legal disputes, the courts try to define falsity or truthfulness of political, scientific and aesthetic assessments.

From this point of view, decisions being adopted by Azerbaijani courts are mainly inconsistent with the practice of the European Court. Note that the European Court envisages that assessments, particularly those related to the political life, enjoy special protection and this is necessary prerequisite of pluralism of views, so important for democratic society. Views, expressed in harsh or somewhat exaggerated form, also enjoy protection. A degree of protection is dependent on the context, in which an either expression has been used, and on the purpose of the critic. Harsh criticism is not astonishing in the matters bound up with political struggle (debates, pre-election campaigns, etc.) or of public interest, as well as in cases where the criticism is aimed at the government, political figures and governmental bodies. For this reason the European Court demands to treat such criticism with greater degree of tolerance. In making clear distinction between information (facts) and views (assessments), the Court declares that "whereas the facts may be proved, assessments cannot be corroborated by proofs. Conformably to assessments, these requirements cannot be met, since they violate the freedom of views as an important part of the law as secured in Article 10 of the Convention.

In Azerbaijan, standards related to defamation are secured largely in Article 46 of the Constitution of the Azerbaijan Republic, Articles 21 and 23 of the Civil Code, Articles 147, 148 and 323 of the Criminal Code, Articles 10, 10-1, 44 and 45 of the Law "On Mass Media", in the resolution of the Plenum of the Supreme Court of the Azerbaijan Republic "On Practice of the Application by Courts of the Legislation on Protection of Honor and Dignity" of 1999 and in the decision of the Constitution Court of the Azerbaijan Republic "On Interpretation of Articles 21 and 23 of the Civil Code" of 2002.

The practice of application of these standards by the courts, particularly, Articles 21 and 23 of the Civil Code of the Azerbaijan Republic when considering claims on protection of honor, dignity and business reputation, has to be properly adjusted since sometimes they run counter to Article 10 of the Convention and the Precedent Law. In particular, it is essential to revise the outdated resolution of the

Plenum of the Supreme Code of the Azerbaijan Republic of 1999 "On Practice of the Application by Courts of the Legislation on Protection of Honor and Dignity". The new resolution, if any, should give explanations, consistent with legal standards of the European Court. Account has to be taken of the position of the court in the case of Dalban regarding a journalist who charged a political figure with corruption and squandering of public funds. The Court declared: "it is inadmissible that a journalist be deprived of the opportunity to express his critical views even if he (she) cannot prove their truthfulness. Further, the Court emphasized that a notion "journalist freedom" enables to resort to some exaggeration and even provocation.

Drawing distinction between the fact and the opinion, as well as the lack of necessity of proving the truthfulness of the latter assume a particular importance for national legal systems. However, the Azerbaijani legal system calls for proof of the truthfulness of ideas or views in cases related to defamation.

The European Court provides for justifications based on honesty of intentions and thus enabling the press "to commit a mistake". As for the above-mentioned Dalban case, the Court declared "there are no proofs that the description of the events referred to in the Article was aimed at instigating a slanderous campaign against GS..." As a matter of fact, approval of justifications based on honesty of intentions supersedes the necessity of proving their truthfulness. Where mass media follow legal intentions, a point at issue is of public interest and a journalist has applied required efforts to verify facts, the press is not responsible even in the event that these facts prove to be unreliable. He who is familiar with the practice of Azerbaijani courts regarding protection of honor, dignity and business reputation, easily realizes how much it is different from the practice of the European Court, which protects the right of journalists to harsh and unprejudiced critical statements against public and state figures and public institutions on matters of political and social interest.

As for the case "Torgeirson", — state-defendant alleged that actual basis is missing in the Articles of the applicant, since he is in no position to prove truthfulness of his accusations. However, the Court recognized the necessity of proving the truthfulness as illegitimate and even impracticable as saying that "mass media could have hardly published anything if it were necessary to publish just verifies facts".

It is obvious that the Court's remarks relate to public debates on matters causing public concern.

Instituting Criminal Cases against mass media contributors and arrests of journalists

It has regrettably to be ascertained that over the past few years criminal cases have been instituted against journalists at the suits of governmental officials on calumny and insult charges.

In 2001, criminal cases were instituted against 10 journalists, two of whom were imprisoned to 6-14 months, three contributors to suspended sentence from 2 to 12 months. Note that 8 of 10 cases instituted under Article 147 (insult) and Article 148 (calumny) of the Criminal Code of the Azerbaijan Republic.

Legal proceedings of this year against journalists ended with imprisonment of founder of "Ulus newspaper" Yagub Abbasov and deputy editor-in-chief Surhay Godjayev. Abbasov was sentenced to 1 year and 2 months under Article 221 (hooliganism), and Godjayev — one year of suspended imprisonment. The reason of the case was a complaint of contributor of the newspaper Aybeniz Ilgargizi about the use of physical force by these persons. On 13 July, straight after the complaint, Abbasov and Godjayev were broad to the 9th Sabail district police department and arrested. On 6 December, the court passed its verdict.

Another much-talked-of legal proceeding was instituted at the Narimanov district court at the suit of the head of Presidential apparatus Ramiz Mehdiyev against "Milletin sesi" newspaper. The newspaper published a material (26 August 2001) titled "Adventures of Ramiz Mehdiyev during the rest", which described various adventures of the country's top official. Following the Mehdiyev's protest, the newspaper had to recognize that it disseminated unverified facts, so it published a refutation in the next issue. Despite this, a suit was lodged to the court, which passed a verdict under Article 147 and Article 148 of the Criminal Code of the Azerbaijan Republic. Editor-in-chief of the newspaper Shahbaz Hudouglu was imprisoned for 6 months, author of the Article Gulnaz Gambarly — sentenced to suspended to imprisonment for 3 months. The court also decided to institute a criminal case against editor of the publication Eynulla

Fatullayev. Next came with their suits against "Milletin sesi" former chairman of the State Property Committee Nadir Nasibov and his deputy Barat Nuriyev, who accused the newspaper of humiliating their honor and dignity. The court complied with their demands and decided to close "Milletin sesi" newspaper.

In 2002, none of mass media contributor was condemned under Articles of the Criminal Code.

In 2003, 8 criminal cases were instituted against journalists. As usual, most claimants demanded to punish mass media contributors under Article 147 (insult) and Article 148 (calumny) of the Criminal Code of the Azerbaijan Republic.

On 20 May 2003, the Yasamal district court considered a claim of MP Jalal Aliyev against acting editor-in-chief of "Muhlifat" newspaper Rovshan Kabirli and correspondent Yashar Agazade. The reason of the claim was the article by Yashar Agazade published in the newspaper of 12 April under the title "Grain Mafia in Azerbaijan". The court sentenced R.Kabirli and Y.Agazade to 5 months of imprisonment. However, they were immediately amnestied and released from the court room.

In 2003, two journalists were sentenced to forced labor for a term of 1,5 years with deduction of 20% of their monthly wages. These were contributors of "Etimad" newspaper Etibar Mansuroglu and Mehbara Shahtahtinskaya.

In July, at the suit of "Azersunholding" corporation the court instituted a criminal case against editor-in-chief of "Yeni Musavat" newspaper Rauf Arifoglu under Article 147.2 of the Criminal Code of the Azerbaijan Republic (deliberate insult of honor and dignity). The court of Sabail district ceased this case, however, made it incumbent upon "Yeni Musavat" to pay a fine to the corporation.

Three months later, in the end of October 2003 another criminal case was instituted against Rauf Arifoglu this time under Articles 220.1 and 315.2, and he was imprisoned to 3 months. Subsequently, this term was extended to 6 months.

As viewed by experts, legal proceedings against mass media contributors are conducted unilaterally with blatant violations of procedural standards. For example, brought to trial are not only author of the specific article as a subject of dispute but several other contributors, including founder, who has nothing in common with the case.

Owing to the spreading of the practice of criminal persecution of journalists in Azerbaijan on calumny and insult charges, it would be appropriate to pay attention to an important conclusion of the European Court. The Court says that among variety of the forms of interference of the state with freedom of opinion the criminal sanctions are of the greatest danger. In the case "Kastells", the accused (member of the parliamentary opposition) was sentenced to imprisonment for the insult of the Spanish government. In his article he termed the actions of the government as "criminal". The Court passed a decision as follows: "A dominating position of the government makes it necessary to demonstrate restrained in cases of criminal persecution, especially as there are other replies to unjustified assaults and criticism from opponents in mass-media".

Where criminal sanctions provided for paying small fines, the Court opposed such sanctions, since they played a part of hidden censorship. In some cases, specifically the case "Lingens and Barthold" regarding imposition of fines of journalists, the Court declared as follows: "those the punishment imposed on the author cannot impede him to express his opinion, nevertheless, it is tantamount to the sort of censure, which may discourage the author from making such criticism in the future. In the context of political discussions, such a sentence may prevent journalists from making their contribution to the public debates over problems affecting the life of the country. Besides, such a sanction could hamper the press to perform its duties as carrier of information and guard of society's interests.

Conclusion

It has to be kept in mind that the previous chapters data cannot be considered as absolutely complete, nevertheless, these data are sufficient to make conclusions and identify tendencies. Besides, the classification of delinquencies and research into their nature affords opportunity to render necessary aid to journalists where appropriate.

In the first turn, of interest is a great quantity of delinquencies in the protection of the freedom of speech and mass media rights in 2003 — period preceding the Presidential elections in the country. As well as during and after the elections. Account has to be taken of the fact that this was the third year of Azerbaijan's membership in the CE. Note that pressures on mass media are exerted both administratively and economically, rights of journalists to the collection and dissemination of information are violated, artificial obstacles are put on the path of printed matter spreading.

At the same time, some journalists violate rules of professional ethics and law, abuse their powers, which, in turn, create additional conflicts.

As has been noted above, the data of the research is just a peak of iceberg, since the number of "latent" (ignored) conflicts is too high. There are reasons for this, and the most significant is tolerance of mass media contributors to the infringement of their rights. Frequently, they attach no importance to such facts, mention them rarely in their articles as an example of bureaucracy of official apparatus. Another reason are serious flaws in the legal competence of many journalists. Sometimes they are unaware of the fact that their powers are restricted illegally, since they are not competent in existing legal standards. The great problem is disbelief in the force of the law, probability of effect legal protection. Like main mass of citizens, journalists prefer not to waste time and strength for reinstating their infringed rights.

To sum up, it may be assumed that overwhelming majority of violations of the rights of journalists and mass media contributors is caused by factors as follows:

- weakness of legislative base in the sphere of mass media, especially access to information and defamation;

- non-observance of norms and standards of the current legislation on mass media, non-compliance with CE recommendations, requirements of the European Court, atmosphere of impunity of those violating principles of the freedom of expression, speech and press;
- lack of independent judicial corps in the country;
- weakness of economic basis of mass media, undeveloped media market, reliable levers of economic pressure on mass media by the authorities;
- intolerance of governmental officials and social and public figures to criticism by mass media;
- low level of professionalism and legal knowledge of journalists;
- excessive political fragmentation and engagement of mass media arising from low professional solidarity of journalist media.

GEORGIA

There are no exact statistical data on the on the violation of journalists' and mass media rights in Georgia.

Nevertheless, on the basis of data provided by a number of NGOs, whose activities are related directly to mass media - in particular, Freedom Institute, Extreme Journalism Centre, Internews, Georgian Young Lawyers' Association, IREX, several journalist unions — we managed to collect, perhaps, the most comprehensive list of conflicts involving mass media, including violations of journalists' and mass media rights in Georgia in the period of the year 2001 to January 2004.

These data are not deemed to be exhaustive — probably, many more conflicts haven't fallen within the scope of our attention. Yet those which have been reported allow us to draw a rather clear picture and give us enough grounds to conclude — despite the process of democratization and obligations related to freedom of expression and mass media rights, undertaken before the Council of Europe upon accession, there are still serious problems with ensuring freedom, independence and security of media activities in the country.

The following report differentiates cases of violations of media rights during the period of administration under President Shevardnadze and on the days of its change in the end of November 2003, as well as analyzes the situation with respect of mass media rights in the beginning of 2004 - already under the new government of Georgia. The following assessment of monitoring results on the facts of mass media rights' violations is not to be deemed an ultimate truth — we simply tried to assess the situation from the most objective point of view.

The analysis of facts in possession has made it possible to reveal basic trends in relation to the journalists' rights violations in Georgia.

In the period of 2001-2003, according to our materials, 53 cases of journalists' rights violations were reported, out of which 8 were reported in 2001, 19 — in 2002 and 26 — in 2003; in the latter category, 7 cases or approximately one-fourth of all fall on the days of "revolution of roses".

Table 1

Years	2001	2002	2003
Physical assault on journalists	4	5	7
Other forms of pressure on mass media and their staff	4	14	18
Access to information	-	-	1

The above-noted figures — if viewed in the light of general situation in the country - are indicating the trend of increasing freedom of mass media, resistance against external pressure efforts and increasingly active reporting of facts of mass media rights' violations, rather than testify an increase in the number of such facts.

Speaking of encroachments on mass media freedom, it is worth to note the recent years' trend of indirect pressure on mass media through bringing suits for the protection of pride, dignity and business reputation. Data on court proceedings are not included in the above-noted general statistics of media rights' violations; they are listed under the separate heading of the present report.

The report does not aim at comprehensive description of all reported facts of pressure upon mass media. Instead, the ones of utmost importance for the complete description of general situation will be noted.

Physical assault on journalists

Data on physical violence against journalists are, perhaps, most comprehensive — each of them draws large public response.

Investigation of a number of such facts, given their public importance, has been taken under the supervision of senior law enforcement officials. Nevertheless, as practice illustrates, such proceedings last for years and rarely bring about any specific results. Thus, it is very difficult, in each specific case, to figure out, whether it was an individual or specific political force deciding to avenge against the

"unwanted" journalist.

Physical violence is the ultimate measure among efforts to "punish" and intimidate the journalist or his/her editors. Impunity of the offenders negatively affects not only the activities of a specific journalist, but also the readiness of mass media in general to perform its professional duties in any situation. Moreover, the society begins to have concerns of its helplessness — if mass media, which are rightly deemed "the fourth power" in Georgia, are subject to unlawful violence, then what about "ordinary people"?!

Among such cases, the case of murder on 26 July 2002 of the popular Georgian journalist, information service chief of TV company "Rustavi 2" Giorgi Sanaya, is particularly noteworthy. Majority of the public and mass media are of the opinion that the aim of Georgian journalist's murder was intimidation of "Rustavi 2" and mass media in general. Almost 3 years passed since the death of Sanaya, who's been shot in the head in his own apartment. Investigation of this fact was taken under the supervision of the highest officials of the country, FBI experts from the United States were involved, numerous court hearings were held... The last accused in the murder of Sanaya — former police officer Grigol Khurtsilava — has pleaded guilty and was convicted in 2003. Nevertheless, there are a number of issues left open in this case. The journalist's widow, Khatuna Sanaya, insists that Khurtsilava is just a dummy and demands to bring "the real murderers" of her husband to justice.

It is to be noted that the facts of murderous assaults on journalists haven't occurred since this landmark case. However, cases of beatings and injuries inflicted upon media representatives have been reported.

For instance, on 5 November 2002, in the entrance of an apartment house, unidentified persons have severely beaten the chairman of the panel of editors of "Tbilisi" newspaper, Iosif Chumburidze. The victim deems that this act of violence was the response from authorities - in particular, of then press-secretary of the President Kakha Imnadze - to one of his articles exposing corruption among government officials.

On the night of 25 February 2001, in Tbilisi, unidentified persons have beaten the chief editor of "Meridian" newspaper Tamaz Tsertsvadze. Criminal proceedings have been initiated on this fact. The newspaper staff informed the police and journalists of other mass media that, in the course of last months, chief editor and staff themselves were receiving phone threats advising them to halt publication of articles criticizing senior officials. Right after the beating, an unidentified person called again to his home and informed his family members that if Tsertsvadze and his staff "will not refrain from publication of such articles, it will be worse".

In Zugdidi, near the bridge over river Inguri, on 6 January 2003, the journalist of "Akhali versia" newspaper Lasha Gvinjilia was beaten. According to information from several mass media, the journalist was avenged by the staff member of the Security Service of Abkhaz Autonomous Republic (the branch of the Autonomy's government, functioning in Tbilisi) Malkhaz Changelia and several other persons. It is supposed that they "settled scores" with the journalist for the publication of article they did not like.

In a number of cases, the force has been applied by the authorities to prevent the dissemination of discrediting information.

For example, during the fight of the members of Parliament, which took place in the building of the Parliament of Georgia on 5 May 2003, state security guards attacked the correspondent of "Dilis gazeti" newspaper Aleko Sharvadze, who's been taking photos, and took away his photo tape and accreditation document. Later, these items were returned, but the takes were already outshined.

In the same year, in Kutaisi, local authorities prohibited the journalists to take photo of the homeless person settled next to the building of city's administration. After journalists refused to comply with this "order", photo camera was taken away by force.

On the morning of 7 December of 2002, at one of the police stations of the Saburtalo district of Tbilisi, camera crew of TV Company "Kavkasia" was physically assaulted and their video camera taken away. The police was unhappy with the intention of journalists to videotape Chechens, taken into custody during the operation of law enforcement agencies of Georgia on checking of documents and reg-

istration of Chechen refugees residing in Tbilisi. (Later, NGOs of the country issued statements about numerous violations of human rights in the course of this operation). In the end, the damaged camera without a videotape has been returned to camera crew of "Kavkasia".

The above-mentioned cases, one way or the other, testify of intolerance of officials with regard to criticism and objective or subjective opinion on certain issues that involve their interests, and expose their non-readiness to be subjected to media and public control.

Besides, the analysis of infringements of freedom of expression has simultaneously revealed one more trend — inherent non-acceptance of mass media as a potential source of criticism or wrong interpretation of events.

The hostile attitude towards mass media has particularly surfaced during last two years, when certain political instability appeared in the country. In this period, a number of mass media representatives were attacked during demonstrations of various opposition parties - only because they were journalists.

For instance, the proponents of former President Zviad Gamsakhurdia, who were picketing in front of Parliament of Georgia on 29 January 2003, attacked the correspondent of independent TV Company "9th Channel" Tea Tuashvili and her cameraman, who were filming the demonstration for the news edition. The demonstrators beat the journalist and broke the video camera. The criminal proceedings were instituted upon this fact.

At the gathering of "Revival" political party in the Sports Palace of Tbilisi on 18 November 2003, the participants (persons unspecified) did not allow the journalists of TV Company "Rustavi 2", which has often been critical of Ajarian authorities, into the meeting hall, attacked the camera operator and attempted to damage the video camera. The incident has been resolved only after interference from foreign journalists accredited in Georgia, who declared that in case the correspondents are not allowed to report on the meeting, they will also refuse to prepare materials about it.

In the said case, the aggression of "Revival" representatives has been directed against specific TV channel — "Rustavi 2", which has

repeatedly criticized the authorities of Ajarian Autonomous Republic, head of the latter — Aslan Abashidze — being the leader of "Revival" party.

Such situation is certainly of concern. It testifies of hostile attitude towards mass media in the public, even if only a certain part of the society is concerned. Perhaps, one of the causes lies in non-readiness for criticism or acceptance of different opinion. Such position is characteristic for either officials or representatives of political parties, including opposition parties. It is fair to note, however, that sometimes journalists themselves exercise biased and unprofessional approach to reporting of events, thus causing negative reaction of the public.

Other forms of pressure on the media

Apart from cases of physical violence against journalists, another method of exercising pressure on the media, such as issuing threats, is of particular concern.

Investigation of these facts is even less successful than in cases of physical violence against mass media representatives. The overwhelming majority of threats to media come from anonymous persons and it is difficult to draw the dividing line — whether they have been initiated by specific individuals who have been unhappy with media materials or reports, or manifest the position of authorities. Quite often, mass media themselves ignore threats in their address; therefore, these cases are difficult to be statistically assessed and their "official" number is substantially lower than factual. Such conclusions can be easily drawn in the light of frequent statements by the editors of the newspapers or TV channels to the effect that they "will hold to their position despite repeated threats".

The "Independent Newspaper" of Moscow announced, on 11 February 2003, suspension of publications by its correspondent in Tbilisi Anatoliy Gordienko. The newspaper has taken such decision in connection with the fact that "professional activities became dangerous for the life of Gordienko". In particular, as the newspaper reports, "Gordienko was contacted by phone by an unidentified person, who offered him to leave Georgia immediately. In case of refusal, Anatoliy Gordienko and his family were promised quick and brutal

vengeance". The author of the call was suspiciously well-informed about the lifestyle of the correspondent, of his publications and was able to analyze them very professionally, notes the newspaper. The phone threats started after the publication of one of his articles devoted to relations between Russia and Georgia. Presently, Anatoliy Gordienko is in Russia and works as staff correspondent of "Independent Newspaper".

In 2002, the correspondent of the national newspaper "Alia" in Poti Eliso Janashia received the phone call from an unspecified person at her home; the person required that she should stop working "on this case", and stated, among other threats, that her son will become an orphan. The author of the call did not specify "this case". The journalist referred to the police. "Alia" newspaper, commenting on the threats, stated that its correspondent in Poti was involved in journalist investigations in three directions at the time. "Alia" haven't specified what kind of investigations were going on or whom did they concern, but stated instead that, in case of one more threat to its journalist, the relevant documents, which are surely protected, will be published immediately.

On 30 October 2002, popular Georgian newspaper "Resonansi" stated that during the last days unspecified persons were calling its correspondent Eka Gulua with threats of retaliation; the newspaper did not specify the cause of vengeance. The editors insisted that the journalist has been spied on. The editors of "Resonansi" called upon the law enforcement bodies to put an end to persecution of the journalist.

Only 3 cases of explicit threats have been reported in 3 years, in two of which the threats were coming from the authorities.

For instance, on 27 February 2003, the head of Lanchkhuti (Western Georgia) police Tengiz Kikvadze threatened local representatives of Georgian newspaper "Alia" that in case they won't stop defaming the police, they will be placed in a "detention cell specially renovated for them" in local prison. His indignation was caused by a number of articles published by "Alia", which provided examples of close cooperation between the police and criminals in this town. Similar threats to journalists were issued also by the head of local administration.

A year before, the member of the Parliament of Georgia Vitali Khazaradze stormed the editor's office of the newspaper "Axali gazeti" and threatened the correspondents, who mentioned the parliamentarian in one of their articles in the following way: "... his [Kota Barkaya's] pre-election suite with the ghosts of Bondo Shalikiani and Vitali Khazaradze creates more negative than positive publicity and perspective of victory." In response, Khazaradze has threatened quite strange revenge - "to publish the photos of correspondents in the porn magazine".

Persecution of media representatives can last for years and take various forms. For instance, in October 2003, Khatuna Tsomaya, publisher, editor and director of newspaper "Poti", published in Poti, stated during the press conference in Tbilisi that she is subject to regular threats and intimidation since as far as 2001. In the words of Khatuna Tsomaya, during this period, apart from regular phone threats, her personal and then office cars were damaged; later, her private apartment has been robbed.

Finally, in October 2003, the editor's office, where the NGO "Social Centre for Freedom and Democracy" is also situated, was robbed. All electronic equipment, including computers, tape recorders, photo and digital cameras, fax machine, printer, electricity generator (the damage exceeded 10.000 USD) was taken away from the building, and the electric wiring damaged as well. As a result, the publishing of the newspaper has been actually halted. Tsomaya expressed her awe at the fact that the police, whose central station was situated in 150 meters from the office building, was unable to notice the criminals, who would need at least a van for carrying away such amount of equipment.

Khatuna Tsomaya voiced a suggestion that actions of this kind were caused by a number of critical articles concerning local authorities. She noted that despite repeated appeals to the police on the above-mentioned facts, none of them has been investigated.

Robbing an editor's office or its imitation, as well as destruction of editorial equipment belong to the category of rather effective "instruments" for those unsatisfied with the work of certain mass media and represent an attempt to "shut it down". If very poor material resources of national mass media and limited advertising market are taken into

account, it becomes quite clear how difficult it is for any printed media or TV company to resume its work to the former extent.

As a result of similar actions, besides "Poti" editor's office, the following were also affected:

- Local TV company "Fazisi", the building of which was burnt down on autumn 2003. Law enforcement authorities failed to determine the cause of fire. The firemen suggested that the cause of ignition could have been an electric heater left in gear at night; this version, however, has been turned down by energy workers, who informed that the electric supply to the building was cut off at night. "Fazisi" favors an opinion that it was an intentional arson. The broadcast of the local TV company has been suspended for a long time, as long as "Fazisi" was deprived of basic devices and equipment necessary for broadcast.

- Regional TV Company "Kutaisi" was robbed on the night of 9 April 2002. The offenders took away practically everything, the damage of the TV Company constituted about 20.000 USD. The broadcast has been suspended for a certain period of time. Director of the company Temur Gadabadze stated that he is unable to qualify the fact but only as a political act. The similar opinion has been expressed by local businessman Bondo Shalikiani, who's been cooperating with the TV company; Shalikiani considered the robbery as provocation from the authorities, aimed at preventing him from participation in upcoming municipal elections.

However, the destruction of editor's office property does not represent the only method used for blocking the work of mass media. One of vivid examples is the case of the same TV Company "Kutaisi". On 25 April 2003, all staff of "Kutaisi" has been placed in the hospital as a result of severe intoxication with an unidentified gas.

At midday, all staff of information service of TV company "Kutaisi" gathered in the studio for traditional briefing to discuss the upcoming air. Approximately 40 minutes later, one of the journalists felt unwell, and one hour after all of 18 journalists have been taken away by emergency.

The information broadcast of the company has been resumed only on 30 April.

Criminal proceedings were instituted on the fact of group intoxication of journalists; the proceedings were subsequently closed on the basis of lack of grounds, while the case was qualified as an accident.

High concentration of carbon dioxide and acetone fumes was found in the studio, but the source of intoxication has not been identified. The head of NGO "Centre for Democracy Support" Giga Shushania declared that "the efforts of local authorities to intimidate the journalists of TV company "Kutaisi", whose activities they are not particularly fond of, can be traced in this incident".

TV Company "Kutaisi" was subject to economic tools of pressure as well — in February 2003, on the basis of the suit brought by "Imerservice" company, the assets of the TV Company were seized. The administration of "Kutaisi", deeming the suit illegal, filed a counter-claim to the court, after which the seized assets were freed.

The cases of pressure through the use of economic tools were reported in relation to other mass media as well.

Rather original is exercising pressure on mass media through various social groups - on religious or other grounds. In such cases, the rest of the public usually tries not to interfere into the conflict, in order to prevent its rouse, and waits for its resolution by the parties themselves.

A vivid example of such influence on media can be the case of radio station "Dzveli kalaki" ("Old town") in Kutaisi. In January 2003, a group of Kutaisi residents brought a suit to the local court claiming that the aerial emanation of FM radio station "Dzveli kalaki" negatively affects their health. On 23 January 2003, on the basis of the suit, the court of Kutaisi has temporarily suspended the station's broadcast.

The leadership of "Dzveli kalaki" refused any possibility of negative influence of their aerial on well-being of population, and presented relevant findings of expertise on the safety of broadcast, as well as modified radio broadcasting license. The staff of radio company, as well as its listeners, were convinced that the suit revealed the fight against "Dzveli kalaki" on political and ideological grounds.

On 28 January, the staff of this radio station was attacked by a group of orthodox seminarians, who stated that the radio station is practicing the propaganda of Catholicism and sect ideology on air. On 31 January, a day after the court of Kutaisi allowed temporary resuming of broadcast of the radio station "Dzveli kalaki" until the final decision by the court, a group of citizens barricaded the street in front of the radio station. The police disassembled the barricades. However, after policemen left, the crowd began to smash up the station; some of attackers were armed with crowbars.

The commission formed at local Sakrebulo and mayor's office determined that aerial has a negative impact on health of residents of a nearby district.

Later, in February, a special commission from Tbilisi reached the conclusion that the broadcast is carried out with respect of all necessary standards and is not dangerous for health.

Nevertheless, on 28 March 2003 a group of residents has demolished the aerial. On 17 April, the aerial was stolen, causing a suspension of radio broadcast for one month.

After prolonged court hearings, including the ones on debacle of radio station and theft of the aerial, administration of radio company choose to compromise and moved the aerial to another place.

The pressure on religious grounds has been also exercised on TV and radio company "Stereo One" of Tbilisi. On 25 January 2002, the proponents of infamous priest Vasili Mkalavishvili, excommunicated by Georgian Orthodox church, appeared at the building of the independent studio Stereo One and required studio workers to stop daily broadcasts of the protestant church program with Bible comments. Their appearance was preceded by a number of phone threats and requests, which resulted in a compromise made by the studio — the air time of the program has been shifted from evening to early morning.

This time, the administration of the studio called the police who have ousted the unwanted guests. Shortly after, the crowd of their supporters, gathered near the building, demanded destruction of "satanic computers" and threatened to demolish the studio if the company will not stop the broadcast of the program. The latter was forced to

go back on its word, but in April 2002 it resumed the broadcast of the program.

In May of the same year, the TV studio was visited again by Vasili Mkalavishvili and three of his proponents. During conversation with administration, one of them hit the financial director of the studio Vakhtang Chkuaseli and tried to reach his handgun; after this, he was escorted out of the building by security guards. On the same day, the attackers returned and attempted to force the administration of the TV and radio company to admit that the story with the handgun was made up by them. This incident was witnessed by the journalists and the police, who have been called by the TV company in advance. Having failed to gain their ends and expressing threats, the proponents of Father Vasili left.

/Since March 2003, Vasili Mkalavishvili is in three-month prison custody. The law enforcement bodies instituted criminal proceedings against Mkalavishvili on the counts of facilitating religious confrontation, destruction of property and hooliganism./

Rather disturbing are reported cases of assault on media representatives and destruction of office assets by representatives of law enforcement bodies - while law enforcement is the very authority bearing the duty to suppress unlawful acts.

In September 2002, after a topical broadcast on criminal situation in the region of Samegrelo - Zemo Svaneti (Western Georgia), law enforcement officers stormed the building of the regional TV company "Odishi" and laid it to waste. The devices necessary for broadcast were among the equipment destroyed. The journalists who tried to oppose the aggression of law enforcers were beaten. The cameraman attempted to film the frames that were documenting the aggression of the policemen. During the fight, the video tape has been damaged. Thirty minutes of documentary illustrating the outrages of law enforcers were lost, but even with saved materials it was possible to give due publicity to the event.

On the day of the incident it was publicized by all TV channels of Georgia. It was given varying qualifications — from debacle of the TV company to seizure attempt.

The public response to this event coerced the Ministry of the Internal Affairs of Georgia to show an initiative and start investigation. Numerous court proceedings in various instances, which were still going throughout 2003, are not finished yet.

Regional TV company "Odishi" is among the most popular in the region; the channel regularly broadcasts the programs aimed at criticizing local authorities and law enforcement bodies. This incident is only one in the whole series of pressure efforts on this TV company.

This should not be surprising, since higher is the popularity of mass media, more is its influence on the society; this is not favored by those who are afraid of publicizing their unlawful actions.

The highest places in the popularity rating in Georgia are taken by broadcasting media, and the first place among them, by the results of last 3 years, undoubtedly belongs to TV company "Rustavi 2". This TV channel, since almost its inception, has been deemed as explicitly opposing to the government and has actively supported all mass actions against the government in the country. No surprise that the authorities have put forth every effort to halt its work. However, taking into account the changes in the political situation in the country and status of Georgia on international stage, it was impossible to achieve this goal directly - as it was done in 1996, when the broadcasting license of "Rustavi 2" was suspended; so it was decided to resort to other forms of pressure.

In October 2001, a group of staff members of the Ministry of State Security appeared at the office of TV company "Rustavi 2" and demanded to clear the building for the purposes of search; grounds for the search were charges of tax evasion. The Ministry of State Security lacked search warrant and other authorities for performing this task. "Rustavi 2" organized live broadcast from its office, and, under the pressure of indignant public, which held a demonstration in front of "Rustavi 2", the campaign against the channel was stopped.

On the night of 19 February 2002, the office of "Rustavi 2" was shelled. The bullet has shattered the window of journalist Akaki Gogichaishvili, the presenter of the TV program "60 minutes", devoted to journalist investigations. The cabinet is situated on the 16th

floor of the building; there was no one in there at the time. The administration of the TV company declared that the shot wasn't occasional, but aimed at intimidating the journalist staff of the company and particularly Akaki Gogichaishvili.

In the same year, on the late evening of 14 May, the office of "Rustavi 2" was shelled again. The bullet released by the sniper from one of the streets adjacent to the building hit the window on 16th floor. None of the persons present at the building were injured. Both facts were subject to investigation, but offenders haven't been identified.

The facts of shelling of "Rustavi 2" were reported in 2003 as well.

Such acts against TV company exceed the limits of pressure as such; several national experts qualified them as terrorist attempts.

Among facts of pressure on "Rustavi 2", a number of court proceedings can be noted, which were initiated in the last years against the journalists of TV company, accusing them of infringement of pride and dignity and defamation.

It is to be noted that the TV company withstood all attempts of pressure upon it in a fitting manner; moreover, wide broadcast of such facts contributed to the rise of rating of "Rustavi 2".

Speaking of pressure with regard to mass media, the facts of detention and arrest of journalists should be noted; however, such facts have been reported only in conflict zones of Georgia. In last 3 years, 4 facts of this kind have been reported.

In particular, on 15 March 2002, three journalists of TV program "60 minutes" of "Rustavi 2" TV company— correspondent Vakhtang Komakhidze and cameramen Aleko Kvatashidze and Beso Khitarishvili were detained by law enforcement bodies of Tskhinvali at the entrance of the town. The crew was filming the border flea-market, which mostly trades in contraband goods. The representatives of Tskhinvali militia grounded detention on the fact that documents of one of the Georgian journalists were not in order. The incident was resolved and journalists given a free pass only after militiamen of Tskhinvali contacted their Georgian counterparts. Author

and presenter of the program "60 minutes" Akaki Gogichaishvili stated that the real cause of detention was their journalist investigation concerning trade in arms from the military bases of Russian peace-keepers.

On 6 January 2002, two Georgian journalists — correspondent of the First channel of State TV Teona Gurtskaya and correspondent of the TV company "Rustavi 2" Emma Gogokhia — were detained in Abkhazia. They were filming in the Gali region of Abkhazia and got caught in the raid conducted by Abkhazian authorities. Fearing complications, the journalists managed to send their cameramen out of the dangerous zone, hoping that militiamen would be more polite towards women. The militiamen contacted their superiors and expressed their readiness to release the journalists on the condition that they will hand over the filmed video tape to militia. The journalists categorically refused this proposal, since the video tape contained the recording of the visit of Minister of Environmental Affairs of Georgia to one of the regions of the country — the event that had no connection whatsoever with Abkhazia. Late at night, the journalists were released.

On 21 May 2003 the Abkhaz party refused, for a long time, to allow the entry of four Georgian journalists to the Gali region, who were going there for reporting on Georgian-Abkhaz negotiations. The detaining authorities demanded from the journalists, who were heading for Abkhazia on the vehicle of the United Nations mission, an additional proof that they were going exclusively to Gali region.

Situation has not improved in 2004. On 7 January, in the zone of Georgian-Abkhaz conflict, an unidentified armed group kidnapped the representative of the Association of Young Political Scientists and Journalists, 25 year-old David Badzagua. Badzagua was in the group accompanying children of Georgian families residing in Gali region of Abkhazia, controlled by Abkhaz party.

In the end of March, the kidnapers released Badzagua. Commenting on this fact in mass media, Badzagua stated that kidnapers accused him of intention to complicate the political situation. At the same time, he was not aware which group did his kidnapers belong to.

It is clear that until the final regulation of relations between the central authorities and Abkhaz and South Ossetian regions, the incidence of such facts cannot be excluded in the future.

Experience of post-Soviet states demonstrates that during the political tension, as well as change of political distribution the pressure on mass media usually increases. In this respect Georgia was not an exception — during the changes of power in Georgia the number of abuses of mass media rights increased.

In the pre-Revolutionary period Georgian mass media was subjected to increased pressure as by the authorities and their supporters (namely, criticism of the broadcasting style of the first state channel expressed by the head of the state on air, attempt of governmental security to prevent journalists of certain TV Companies from shooting some events and etc.) as by supporters of the opposition leaders (namely, threat of the national party members to close down editorial office of "Georgian Times" after they come into power, etc.). Some facts about violation of journalists' rights were reported during the first days of the "Rose" Revolution, taking place in the end of November 2003.

The pressure was exerted on the editorial offices of broadcasting and printing mass media that did not support a new political power. Threatening calls were made to the offices of mass media.

On November 2003 supporters of new authority arrived to the building of State Television Corporation and demanded to amend the broadcasting style of the television. For this reason the personnel held an action of protest. On 24 November broadcasting of a private TV Company "Kavkasia" was barred for more than 24 hours.

On 25 November the windows of the flat were the presenter of the program "Dialogue" Luba Eliashvili of TV Company "Iberia" is registered were shot and the window was broken by the bullet. Fortunately nobody suffered as it was night and the parents of Luba Eliashvili residing in the flat were asleep. Presenter of "Iberia" considers that it was another attempt of her intimidation.

Later attack was exposed to TV Company "Rustavi 2" that played an important role in the "Rose" Revolution". Early in the morning on December 29, 2003 the main window of studio of the office of TV

Company "Rustavi-2" was shot by a large-calibre weapon where morning show was being made at that time. The shell hit the wall near the window, but no one suffered. Nevertheless as a result of explosion that took place simultaneously with the shot five floors of 17-floor building were seriously damaged —from 3rd floor to 7th floor. The head of the TV Company "Rustavi-2" Erosi Kitsmarishvili verified that the criminals followed more serious goals than intimidation. This event was considered to be an attempt of the partisans of the ex-authority to settle scores.

Violation of right of access to information

Only one case is reported that public offices refused to provide a journalist with information. However the practice reveals that this is rather spread practice. Lack of complete data is connected (with) the fact that journalists usually consider it unnecessary to inform the society about such facts and bring action in court as they find alternative sources of interesting data.

The Georgian Administrative Code provides free access to public information. The Code stipulates that "everyone has the right to get to know public information in administrative body, also to get its copy, unless it contains state, commercial, professional or private secret.". Public information is open unless otherwise provided by the law, and if disclosure of information does not affect national security and prosecution of criminal offences.

Meantime, while the term "state secret" is comprehensively defined by the national legislation, the terms "professional", "private", "commercial" secrets as provided by the law leave a gap for interpretation that is widely used by the public officials willing to hide information from media.

However, even if any "secret" is not concerned, access to information is still troublesome. In accordance with the Code, the public office has to provide information immediately, or in specially defined cases not later than 10 days. Meanwhile, rather often persons responsible for providing information either "hide" from those wishing to contact them or "delay" the procedure of disclosure of information for some days. It affects the work of mass media very negatively,

especially on the work of information agencies and other mass media working on-line mode. Furthermore, there are cases of providing of inaccurate information — by reason of both deliberate action and incompetence.

We consider that in the current circumstances mass media have to take more active position and create precedents of applying to the court for punishing the officials having refused to furnish them with information or distorted it.

Complaints Against Mass Media

During the previous years there is a tendency towards increase of a number of complaints against journalists and editorial offices. Vast majority of complaints were filed on facts of defaming honour, dignity and business reputation, though there were isolated instances of violation antimonopoly, advertisement or electoral legislation.

We have traced in total 12 complaints on the subject of defaming honour, dignity and business reputation against representatives of mass media.

Such court examinations usually do not come to an end by hearings at one instance and are protracted in time.

Complaints on defaming honour and dignity basically are filed by the authorities and their person in attendance, and usually against most famous broadcasting and printing mass media. Analysing complaints as well as outcomes of the proceedings, it may be concluded that real reason of complaints against journalists are either endeavour to suppress indirectly MASS MEDIA—that is of course violation of media rights, or unavailability of the public official to be an object of public criticism, not taking into consideration that "political figure unlike an ordinary individual, deliberately takes and is by all means subjected to control of mass media and public (position of the ECHR.).

Summarizing such proceedings journalist or editorial offices are often found guilty despite the impartiality of the criticism (especially in the courts of the first instance).Lack of comprehensive definition of margins of private and public interests, of division of a fact and opinion, and the fact that Georgian Courts rarely use European standards con-

tribute to this process. General political situation and position of authorities have negative effect on the decisions of the courts although the latter are formally independent.

One of the most remarkable proceedings accusing journalists of defaming honour, dignity and business reputation is case Akaki Chkhaidze, head of the LTD "Sakartvelos Rkinigza" vs. Akaki Gogichaishvili, presenter of program "60 minutes".

Akaki Chkhaidze being at that time favourite of the Georgian authorities filed a complaint against the journalist after he had been blamed in misappropriation of funds of especially large quantities and corruption by the series of program "60 Minutes". Chkhaidze rebutted all charges stating that they defame his honour, dignity and business reputation and evaluated his moral damage for 1 million Georgian Lari.

In August 2003 Tbilisi Circuit Court accepted Chkhaidze'z complaint and ruled that Gogichaishvili had to apologize publicly and pay 50 thousand Georgian lari for reimbursing moral damage, and to recoup all legal costs. The proceedings unlike the traditional protracted ones took only a day.

Akaki Gogichaishvili appealed the decision to the Supreme Court of Georgia. The judicial hearing was held on February 9 2004 after the ruling authority of Georgia had been changed (that took place in November 2003). This time the court proceedings were rather unordinary as the ex-head of the railways had already been detained for a month accused of misappropriation of state funds of especially large quantities. Nevertheless the appeal filed by the "Rustavi-2" to the Supreme Court of Georgia had to be considered formally. It was clear that Chkhaidze had no chances to win a case; therefore his council Irakli Kbilashvili called back the complaint. As officially reported Chkhaidze withdrew complaint because he was deprived opportunity to be present on the proceeding.

Akaki Gogichaishvili was less fortunate in 2001 when the Council of Georgian writers and its head Tamaz Tsivtsivadze, also favourite of ex-leaders of the country, brought an action against him and TV Company "Rustavi-2" for defaming honour, dignity and business reputation

In the programs of "60 Minutes" broadcasted on March 26 and April 2, 2000 Gogichaishvili blamed the Council of Writers of misuse of state funds and labelled the organization "rudimentary structure" and "disaster for a country" and the news-paper of the organization — "Literary Georgia" — "worthless" and "beyond the propriety".

On March 13 2001 the Circuit Court of Tbilisi partially accepted a complaint of the Council of Writers and ruled that the journalist had to apologize before the Council of Writers, namely for the term "disaster" that, the court considered, defamed business reputation of the organization, and to disprove phrase "dealing in state funds" as incorrect and also to pay fine of 5000 Georgian Lari.

The Supreme Court of Georgia upheld the decision. It is noteworthy that different instances of court, especially the Supreme Court of Georgia ruling on the cases about protection of rights, including rights of journalists are more often guided by their commendations of the ECHR. Such practice in a substantive level contributes to creation of favourable conditions for independent activity of mass media.

European legal standards served a basis for decisions of the Supreme Court of Georgia on accepted an action on defamation honour, dignity and business reputation filed by the ex-Minister of Interior Kakha Targamadze and some other high officials of the Ministry of Interior against journalist Eliso Chapidze and the news-paper "Rezonansi".

On March 16 2001 an article "Dinamo — property of 7 policemen. Shevardnadze makes a present of 7 million from the state budget to Targamadze and company". The article supported a view that Targamadze and other officials of the Ministry of Internal Affairs seized the Tbilisi Club "Dinamo" with fraud and duress and were going to use state funds designated for this club for private goals. The next day another article by Chapidze was published under the title "Dinamo of thefts and policemen" having the same contents.

The Complainants demanded from the news-paper "Rezonansi" and Chapidze to disprove information published in both of the articles and a million as a redress of moral damage.

Respondents stated that the publication did not covered false facts; as for the assessments, they were opinion of the journalist and the news-paper, perception of an event from the standpoint of the news-paper and journalist.

Tbilisi Circuit Court did not accept the complaint against news-paper "Rezonansi" and Chapidze considering that information, rebuttal of which the complainant required were considerations resulting from the analysis of materials received as a result of the journalistic inquiry and were not factual data. The Court based its Article 24 of the Constitution of Georgia and article 21 of the Law of Georgia on Press and other Forms of Mass Media, as well as Article 10 of European Convention and Decisions of the ECHR, namely decisions *Lingens vs. Austria* and *Castelsa vs. Spain*. The Court pointed out that the margins of criticism of public official should be broader than those used in respect of ordinary citizen", and the former has an obligation to be tolerant to such criticism despite its offensive and outrageous character.

The complainants appealed the decision of the Circuit Court of Tbilisi to the Supreme Court of Georgia, though still without success. However the Supreme Court abrogated the decision of the Circuit Court for disagreement with its motivation. In the Court's view, the respondent was not responsible not because of the fact that the information was not factual data, but because of the fact that "strongly-worded (sharp) assessment of activities of persons having political positions that results from factual circumstances, can not serve as a basis of involvement of journalist's responsibility. When there is no doubt about the accuracy of a fact, and reasoning (discourses) and assessments are made taking into account considerations of other politicians and experts, requirement of their rebuttal is controversial to the freedom of speech". The Court considered that the aforementioned articles "encouraged public consideration of the problem of public interest" and "the journalist and the editorial office did not infringe the borders of freedom of speech and frameworks of criticism prescribed by the law with used the chosen way/presenting information.

Taking this decision the Supreme Court was guided together with the Constitution and national legal acts, by the European Conventions well as by the decisions on cases "*Lingens vs. Austria*", "*Obershlik vs. Austria*" and "*Sunday Times vs. Great Britain*" by the European Court.

It is expected that application of European legal norms in the practice of Georgian Courts will be strengthened after the Law of Georgia on Freedom of Speech and Press comes into force; the latter is drafted by the Liberty Institute and introduced to the Parliament for further discussion. The draft law proscribes the duty of the Court to deal the cases involving issues of self-expression in accordance with the case-law of the ECHR.

In favour of the Georgian Courts it should be admitted that amounts of judgements ruled as redress for moral damage in cases of protection of honour and dignity, including representatives of mass media, are rarely so high that may threaten functioning of mass media.

A decision of judicial organs on case Valeri Asatiani, ex-Minister of Culture, vs. Akaki Gogichaishvili, presenter of program "60 Minutes" and TV Company "Rustavi-2" was an exception.

In 2001 the Minister of Culture Valeri Asatiani brought an action for defamation and defaming honour and dignity against "Rustavi-2" and Gogichaishvili. The program causing resentment of the Minister was broadcasted on April 1, 2001 and it was stated that Asatiani was involved in several homicides and cooperation with intelligence services of different states.

Valeri Asatiani complained to disprove the information and 10 million dollars to redress damage. Proceedings took several years. Finally the Cassation Chamber of the Supreme Court of Georgia upheld the decision of the Circuit Court of Tbilisi partially accepting the complaint of Asatiani. The Supreme Court ruled that TV Company and program "60 Minutes" had to disprove accusation of Asatiani and to redress damage evaluated by the course of 52 thousand lari.

By the way this case had quite interesting continuation in the Constitutional Court of Georgia. The journalist Akaki Gogichaishvili declared that he did not intend to apologize before Valeri Asatiani, to deny information disseminated about him and applied to the Constitutional Court for admitting anti-constitutional article 18.2 of the Civil Code that provides:

"A person is entitled to demand in court the refutation of information defaming his honour, dignity, confidentiality of personal life, inviola-

bility of the person, or business reputation unless the disseminator of such information proves that it is true. The same procedure applies in the case of an incomplete publication of factual information if it defames the person's honour, dignity, and business reputation."

In complaint Gogichaishvili admitted that this article proscribing refutation of information makes him disseminate information that he does not agree with. Besides, the journalist admitted, his view expressed initially in respect of Valeri Asatiani, is still the only truth for him. In the point of view of Gogichaishvili, the aforementioned article conflicts with the Constitution of Georgia that provides that "it is forbidden to prosecute a person on the grounds of exercising freedom of speech, expression..."

The complaint of Gogichaishvili was considered admissible by the Constitutional Court but the consideration of the case on merits began only in the beginning of February 2004.

Commenting the mentioned proceedings the representative of the Liberty Institute Sozar Soberi declared that he agrees with the opinion of Gogichaishvili in respect of inadequacy of the aforementioned article with the Constitution. Soberi considers that "there are enough effective machinery in the Georgian legislation besides this norm to protect honour and dignity, namely, right of answer and compensation of moral damage."

On the hearing the respondent - the Parliament of Georgia - was represented by Shorena Jankhoteli, Legal Department of the Parliament. She stated that "have cancelled given article there will not be any other effective machinery for protection of honour and dignity in the Georgian Legislation".

Independent foreign and national experts were involved in the proceedings; most of them did not agree with Gogichaishvili's position. Essence of their arguments was that an opinion expressed by one person should not violate rights and freedoms of others and right of honour and dignity should confine freedom of speech and expression.

Finally the court did not accept the complaint of Gogichaishvili considering his requirements to be groundless. At the same time the Constitutional Court pointed out the lacuna in article 18 of the Civil Code. The Court considers that the term "data" specified in the arti-

cle should be concretized and terms "opinion" and "fact" be clearly divided.

Such definitions are provided in the draft law on Freedom of Speech and Mass Media. In addition, under the draft, "opinion is protected by absolute privilege".

Finally, I would like to admit another innovation proscribed by the draft law — cancellation of criminal responsibility for defamation. Legislation of Georgia in force provides both civil liability and criminal responsibility for defamation — Article 148 of Criminal Code of Georgia. Though none of the journalists were imprisoned under this article, theoretically it constitutes strong (active) leverage for suppression of press. Both mass media and vast majority of population stands for nullification of this norm

Georgian Mass Media After "Rose Revolution"

Together with the stabilization of political situation in Georgia passions calmed down around mass media. Rough methods of suppression of journalists are not recorded from the beginning of the year — excluding conflicts in regions, in Adjara where the political tension is still serious.

Observance of rights of mass media in Adjara

National experts consider the level of freedom of mass media in the Autonomous Republic of Adjara is very low. Only few oppositional mass media exist in Adjara and even they are suppressed by the local government.

Law on Press and Other Forms of Mass Media in force in Adjara also prevents exercising the freedom of mass media. The law limits the freedom of speech, get and disseminate information, moreover, it legalizes censorship on the activities of mass media.

With the introduction of state of emergency in the Autonomous Republic during the "Rose" Revolution the censorship on mass media was officially introduced in Adjara. The regime still exists. In such conditions the central mass media collection materials about situation in Adjara at the scene faced many difficulties. There were many violations of rights of journalists — including hinder to get and dis-

seminate of information, and even physical violence. Below only few violations are referred to for outline general situation.

In January 2004 groups "Rustavi-2" and "Imedi" were arrested by local police when they were shooting erasure of posters of radical student movement "Kmara" from the walls of buildings. The Journalists wrongly charged with sticking posters of "Kmara, were released only after the Mayor of Batumi Aslan Smirba required from the law-enforcement organs their release.

The Local journalist, deputy editor-in chief of the news-paper "Batumelebi" Tedo Jorbenadze who was accompanying journalists from Tbilisi was severely beaten by three unknown (person).

On January 10 during breaking of the citizens Adjarian Village Gonio who were trying to raise a flag of political party "National Movement" (later new national flag of Georgia) on the top of the local administration building by the units of the Ministry of Interior of Adjara, the journalists of "Rustavi-2" and "Imedi" were deprived camera and, video cassette with materials were destroyed.

On January 13, when the journalists of "Imedi" were shooting the flag of "National Movement" hang out on one of the buildings in the centre of the city — nearby the Ministry of Security of Adjara, about 30 men attacked them stripped him of the camera and beat cameraman David Gogitauri.

After the military parade in Honour of the new President of Georgia Mikhail Saakashvili in Batumi on January 25, supporters of the President held an action that gradually became a meeting and later demarche in the streets. The journalists of the news-paper "Batumelebi", who were reporting at the scene of the events, were arrested by the representatives of the local authorities. Their digital camera was damaged and chip with material of the events was confiscated.

New authorities of Georgia declared freedom of expression and press to be the main priority of their activity. As already mentioned, forceful methods of pressure the press were not recorded from the beginning of the year/ except Adjara and Abkhazia/ though it is not true for other mechanisms (machinery) of influence.

The editorial office of "Georgian Times" pronounced a fact of political pressure by the new authorities. This publishing house encompassing several news-papers, made a statement requiring "cease the war" against it. "Georgian Times" declared that after the "Rose" Revolution "unhealthy hysteria" against it is remarkable and applied to Georgian and foreign NGOs, diplomatic corps, the Parliament of the country and political parties for help. The editorial office of the news-paper specifies that arguments for such statements are the following: recommendation of the President Saakashvili to the Ukrainian journalists not to read the "Georgia Times" in private conversation and his indication on the small circulation of the news-paper that was considered by the editorial office to be anti-advertisement.

The aforementioned case was the only one when the representatives of mass media stated the suppression by the new authorities. Meanwhile it casts doubt that in the beginning of February 3 popular private TV companies — "Mze", "Imedi" and "Rustavi-2", as well as the first State Channel simultaneously stopped broadcasting their evening programs with political debates on air. Commenting the mentioned fact the leader of the fraction "Socialists" Irakli Mindeli stated in the Parliament that he had at his disposal information that the heads of the aforementioned TV companies were threatened that caused the closure of "talk-shows". Fractions "Rights" and "Traditionalists" supported the Socialists' statement.

The speaker of the Parliament Nino Burjanadze commenting the situation pointed out that the TV companies closing the "talk-shows" are private and the authorities had no leverages to put pressure on them. Burjanadze stressed that she "did not cast doubts about the fact that several TV Companies decided to perform new projects to their audience". At the same time Burjanadze supported the initiative to establish a Special Parliamentary Inquiry Committee for the clarification of the situation, The representatives of the three TV Companies refuted the version of suppression. The leaders of the TV Companies explained that the closure of the programs resulted from the desire to renew the format of broadcasting. The head of Temporal Parliamentary Commission Archil Gogelia having met with them also stated that that violations or suppression were not revealed.

In these circumstances to make conclusions is very hard. The mentioned situation may be either the result of latent suppression of mass media or may constitute the outcome of political processes and rearrangements of geopolitical powers, or may be really explained by the desire of the TV Companies to renew their format.

On the conference commenting the situation the Head of Georgia M. Saakashvili indicated that freedom of speech is one of the most important his allies and the more the number of free mass media, the better the case is. He promised "to punish strictly" the heads of the law-enforcement bodies if they attempt to influence (suppress) the mass media.

Summary

Monitoring of violations of journalists' and mass media rights visually demonstrates those factors that infringe (hinder) the independent activity of mass media. It should be taken into mind that fulfilling of the professional duty the journalists not only contributes to the familiarity of the society but it is also connected with the foundations of democratic society — strengthening the rule of law and freedom of expression. This issue is present-day for Georgia as integration into European structures was declared to be the primary political guideline and for the undertaken responsibilities including guaranteeing freedom and independence of mass media.

Among the issues to be solved immediately, from our standpoint, are the following: gaps in national legislation, inconsistency with international standards and problems of their enforcement, also lack of effective machinery protecting the mass media from outside influence. For resolving these problems the will of new authorities is very important. Huge importance has the active and correct position of civil society as well as the mass media.

ARMENIA

International human rights organization "Freedom House" for year 2002 for the first time assessed Armenian media as not free. The significant retreat from the positions taken previously was linked to the intensification of economic pressure and control of media, worsening of the legislative framework. The report of this organization among the negative factors noted the continuing attempts to apply the legal provisions on criminal libel and insult to silence the critical voice of media; the closure of the leading independent TV company of the country ("A1+"); actions aimed to restrict the freedom of expression guaranteed by Article 24 of the Constitution; physical violence and other forms of intimidation that journalists were subjected to for their professional activities, and the journalists, as a rule, remained unpunished.

Worsening of a situation in the media happened gradually: by the results of 2000 and 2001 "Freedom House" classed the Armenian media to the category of partly free ones. The further deterioration of negative trends yielded the sad results. Of course, the assessments of this and some other international organizations can be disputed on a number of issues. However the overall picture is realistic. From our point of view the important thing is that practically every violation of rights of journalist and media, the attempts to restrict the freedom of expression in Armenia immediately receive the appropriate response from the international community. Meanwhile, the establishment and development of such a democratic institution as free and independent media are necessary first of all for us, for the future of the country.

The situation in the sphere is source of great concern. As the statistics show (the data of the Committee to Protect Freedom of Expression are used), the number of physical violence cases with regard to journalists during the period since 2001 when Armenia became a full member of the Council of Europe till 2003 grows invariably (see Table 1). The number of media repression facts nearly doubled in 2003. During the period of study the problem of access to information remained a sensitive issue, too.

Table 1

Attacks on freedom of expression in Armenia in 2001-2003

Year	2001	2002	2003
Physical violence against journalists	2	5	7
Pressure on media and their employees	16	7	13
Violation of the right to receive and impart information	6	6	5

In this report we do not aim at reviewing all the cases when the rights of journalists and media were violated in 2001-2003. To characterize the situation let the most significant facts that received most public attention be presented herein.

Physical violence against journalists

In the evening of December 28 an unprecedented tragedy in the history of independent Armenian journalism occurred — the Chairman of the Council of Public TV and Radio Company of Armenia Tigran Naghdalian. The murderer shot at Tigran Naghdalian's head as he was leaving the house of his parents. Before that, as the investigation proved, the journalist was being followed for a long time. The badly injured Naghdalian died at the hospital.

On the same day the Armenian President Robert Kocharian made a statement strongly condemning the assassination of the journalist and qualifying it as a terrorist act. The RA Defense Minister Serge Sargsian that headed the governmental commission on the organization of the funeral service promised that the "law enforcement bodies of Armenia will do everything to disclose this mean murder".

Statements and condolence on the tragic death of Tigran Naghdalian were made by Armenian and foreign professional associations, international organizations. Thus, in the statement of the Yerevan Press Club

it was stressed that 2002, ending with a cynical murder of a head of a leading Armenian medium was unprecedented in the history of independent Armenia in terms of violence against journalists (unfortunately, as it is shown in the table, in 2003 this number increased). The crime committed "became another insolent challenge to the society and Armenian journalism in particular. Such terrible crimes plunge one in horror, set atmosphere of fear, disrupt the basics of freedom of expression and democracy".

On January 8, 2003 the statement of Secretary General of the Council of Europe Walter Schwimmer was released, who condemned the murder of "one of the most reputable journalists of Armenia" and qualified it as "not only a crime against a person, but also against the freedom of media".

The law enforcement bodies soon announced that that the suspects in the murder have been found and arrested. On July 3, 2003 the RA General Prosecutor's Office announced that the case was submitted to the court. The charges were introduced to 13 people, 10 of them were charged with a commitment of a premeditated crime for lucrative reasons with aggravating circumstances and because of the performance of professional and public duty by the deceased.

The court proceedings that started on July 29, 2003, lasted somewhat more than three months. On November 18 the sentence was read out. The court of primary jurisdiction of Center and Nork-Marash communities found the guilt of all the defendants proven and approved the sentences demanded by the prosecutors. The brother of the former Prime Ministers Vazgen Sargsian, killed in a terrorist attack in the Parliament on October 27, 1999 and Aram Sargsian, presently a member of the Political Council of the opposition "Respublika", - Armen Sargsian was recognized to be the orderer of the crime and was sentenced to 15 years' imprisonment. The defendants used their right to challenge the verdict and on December 16 the case was considered by the second jurisdiction, On January 20, 2004 the RA Court of Appeals ruled to leave the sentence of the primary jurisdiction body unchanged but for one of the accomplices, whose imprisonment was reduced from seven to five years. One month later, on February 20, 2003 the Court of Cassation, too, left the verdicts for the people guilty of Tigran Naghdalian in force.

It should be noted that this is an only case when, because of violence against a journalist, the law enforcement bodies took adequate measures and the case was disclosed. Apparently, the efficiency of the actions was due not only to the significance of the crime but also to the attention that the case received from the supreme administration of the country, media, journalistic association, and the public at large. In other cases, as a rule, those guilty remained unpunished. Moreover, very often the violence against journalist was inflicted by the authorities or officials of some organizations themselves.

In the opinion of independent experts, the atmosphere of the Armenian political and public life, the selective law application practice and sometimes a complete neglecting of the law set favorable grounds for the increasing intolerance to criticism and differing points of view as such. The trend present aiming at solving the problems by violence, the lack of law and punishment contribute to the strengthened distrust within the society, disrupt the belief in democratic values.

Let some specific cases be considered. On May 3 2001 (on World Press Freedom Day!) an incident in Echmiadzin city of Armavir region occurred. The owners of a store under construction, from the windows of which liquid cement was being poured out, a member of the Senior Council of the city Levon Kazarian and his brother started a quarrel with journalists of independent "Echmiadzin" TV company that were shooting the occurrence, then attacked the cameraman Haik Eghiazarian and broke the camera. This fact was investigated by the Echmiadzin territorial division of interior affairs. The criminal expertise department of the Interior Ministry of the country assessed the material damage incurred to be only 28,000 drams (\$50).

On May 19 2001, when at the meeting of the Writers Union of Armenia the elections of the Chairman of the organization was held the then incumbent secretary of the Board of the WUA Abgar Apinian demanded that the press leave the session room. Not having heard arguments that would explain this need the journalists refused to leave. When the correspondent of "Haikakan Zhamanak" newspaper Lusine Barseghian started to take pictures of the voting bin, Apinian snatched the camera and broke it.

In 2002, apart from the murder, described above, other forms of violence over journalists were utilized, too. Thus, on August 24 in Abovian city of Kotayk region the unknown persons gave a beating to the founder of "Abovian" private TV company Artistes Mehrabian and the executive director Azniv Chizmechian at the office of the TV company itself. The assaulters motivated the violence by the "unpermitted" shooting of a trade stall owned by one of them. The next day at the interior affairs department of Abovian Azniv Chizmechian met the Mayor of the city Karo Israelian, who, along with one of the attackers threatened her and her sons. By Chizmechian's confession, the relations between the TV company and the city mayor deteriorated after on April 4, 2002 on the air insulting statements of the Mayor to the address of some local entrepreneurs were made. The latter ones filed a suit with the court and won the case and "Abovian" TV company paid much attention to these events. However, the head of the Abovian administration denied his partiality to the beating of the TV company management, even though he did not conceal his disapproval of the programming.

The incident attracted the attention of not only the Armenian public but also the diplomatic missions and international organizations accredited. The Ambassadors of a number of European states and the representatives of OSCE Office in Yerevan visited Abovian, where they met the city administration and the management of the company.

The later developments showed the link of the events with elections to local self-administration bodies. On September 5 "Abovian" TV company was visited by a group of strong tough guys who demanded to be told the location of Artashes Mehrabian. To avoid a new conflict, the staff had to interrupt the work. Several days later Artashes Mehrabian, at the meeting with journalists told that on September 6, by the entrance to the editorial office of "Or" newspaper he was awaited by three men. One of them demanded that "Abovian" TV company promoted only the incumbent Mayor and promised "significant amounts" for that. Otherwise, as the unknown visitors threatened, the broadcast will be stopped until the end of elections scheduled for October 15. Mehrabian was also ordered to leave the city of Abovian till that time.

The incident was described by the founder of the TV company in his address to the supreme administration of the country disseminated at a press conference in Yerevan on September 9. On September 18 "Abovian" TV company resumed its broadcasts. The next day in Abovian a meeting of representatives of media, journalistic associations with the administration of the TV company and Mayor Karo Israelian was held, where the conflict was discussed and the need to ensure the freedom of expression was stressed. On the evening of the same day the head of the city administration spoke on the live air of "Abovian: and in fact made an apology for the incident. The investigation on the case of beating the administration of the TV company did not yield results.

On October 22, 2002 in one of the central streets of Yerevan a manual grenade exploded and injured by shrapnel Deputy Director of Caucasus Media Institute Mark Grigorian as he was going home.

The incident was broadly covered by Armenian media, and was also mentioned in a number of reports by international organizations. In particular, on December 12 the OSCE representative on media freedom Freimut Duve in his regular report on the situation in the region expressed a hope that the Armenian authorities will conduct a thorough investigation of the incident.

Criminal proceedings were instituted. However, the investigation yielded no results. In summer 2003 Mark Grigorian established permanent residence in the United Kingdom.

On October 25, 2002 an attack on the journalist of an opposition newspaper "Haikakan Zhamanak" Gegham Nazarian was made. As the publication itself informed, the unknown assaulters gave a severe beating to its employee; "in particular struck him with a blunt item on his head". Several days later the Public Relations and Information Division of the RA Ministry of Interior Affairs published a statement in the newspapers, which said in particular that the participants of the incidents were disclosed — these were two adolescents of 16 and 13. One of them asked Gegham Nazarian for a light in an impolite manner; this resulted in a scuffle. Being pushed, the journalist fell down and hit his head on the pavement.

The newspaper, on its behalf made a response to this statement, concluding that "the incident is NA organized provocation against "Haikakan Zhamanak". The response of the Interior Ministry allows proposing the following supposition: the provocation most probably was prepared at the Ministry itself". Notably, the Ministry preferred not to continue the investigation, even though being accused of a provocation.

On November 27, 2002 in the city of Gyumri a conflict between the bodyguards of Mayor Vardan Ghukasian and the correspondent of "Haikakan Zhamanak" in Shirak region Arman Galoyan broke out. According to the journalist, after the session of the regional administration he was approached by the bodyguards of the Mayor and started insulting him. Arman Galoyan tried to record the words said, and his recorder was immediately snatched away, being returned only sometime later without tape or batteries. The actions of the guards were caused by a number of publications against the Mayor.

The inadequate attitude to criticism, intolerance to alternative opinion and those expressing it, existing in the society, were particularly intensified in 2003 — during the period of presidential and parliament election campaigns. Thus, on the day of elections of the head of the state, on February 19 a whole number of incidents. At the precinct 122 of Yerevan unknown persons forced the cameraman of "Shant" independent TV company to give his camera and the videotape which had the shots of ballot box stuffing by one person. On the same precinct the correspondent of "Ayzhm" newspaper Gohar Vezirian was attacked, after she found the filled ballots and informed about it the proxy of the presidency candidate Stepan Demirchian. When the election commission was trying to see what was happening unknown people attacked the journalist and took away her recorder.

At precinct 0356/16 one of the members of the election commission snatched the photo camera of journalist Susanna Poghosian that was accompanying the correspondent of Births "Economist" magazine Gedeon Michfield.

On March 15, 2003 in Vanadzor during an action by the local branch of Helsinki Citizens Assembly (HCA), prohibited by the authorities

and bearing the title of "Let us protect our rights" the head of this organization, the Editor of newspaper "Civil Initiative" Artur Sakunts was arrested. After the brief consideration the court made a resolution of placing administrative arrest on Sakunts for 10 days for "malicious disobedience" of the power representatives.

During the action HCA Vanadzor Branch planned to inform about the violations, recorded by the observers of the organization during the presidential election — 2003, which had been announced previously. The ban of the municipality on the action received much coverage. Concern about the arrest of Sakunts was expressed by journalistic and other public associations of the country, as well as a number of international human rights organizations.

On March 18, 2003 the police did not allow the photojournalist of "Arminfo" news agency to shoot the protest action by the residence of the Armenian President, aimed to support Armen Sargsian, who had shortly before that been arrested on charges of being involved in the murder of Tigran Naghdalian. The law-keepers gave the journalist several hits by a baton, took away his camera and driven to the police station. Minasian was released in two hours — after the intervention of colleagues, the management of the news agency and police.

Journalists were also subjected to physical violence by private persons. Thus, on April 29, at the editorial office of "Chorrord Ishkhanutyun" Newspaper its correspondent Mher Galechian was beaten. According to the journalist, his attackers had previously visited the editorial office because of a piece that contained incorrect information. Mher Galechian, not being the author of the publication that caused the discontent, made a refutation text published in the next issue and accompanied with an editorial note that the visitors did not present documents that would confirm their point. In response to this the two angry people again came to the editorial office, started a scuffle with Mher Galechian and hit him on the head with an iron chair. The journalist was hospitalized with a brain concussion. The police instituted criminal proceedings on the incidents and though the assaulters of the journalist were identified, no punishment followed.

On September 27, 2003, at night in Yerevan an assault was made against the Chief Editor of "Or" newspaper Gayaneh Mukoyan and her husband, the director of the same publication Rafael Hovakimian. Hovakimian's car passage was blocked by a "Niva" vehicle. Four unknown men with their faces hidden dragged Hovakimian out of the car and hit him on the head. Gayaneh Mukoyan was trying to get in touch with police by her mobile telephone, however, she was beaten too. The Chief Editor of "Or" was hospitalized with a nose fracture and slight brain concussion. She was operated on. On the attack on the management of the newspaper a criminal case was filed, however, the investigation yielded no results.

Pressure on media and its employees

Apart from physical violence against journalists during the period of interest other forms of pressure on media and their employees have been registered — using economic, political, legal and other levers. Year 2001 was particularly alarming in this regard. Let several fact be considered.

... The cameraman of independent "A1+" TV company Robert Kharazian got into a completely ridiculous situation. He was facing the need to prove in court that he did not beat a passer-by. Kharazian had been shooting in one of Yerevan parks. A drunken man came up to him and started to demand that the cameraman shoot what he wanted to tell the world. By the testimony of the eyewitnesses, the cameraman first did not pay attention to the man and went on with his work, then pushed him aside and left rapidly. It turned out later that the man with the traces of beating got to hospital. Criminal proceedings were instituted against Robert Kharazian. The defendant supposed that the incident had a continuation without him and someone else had beaten the injured man, since he was pestering people around, too. He was however unable to probe that and was sentenced to 6 months' reformatory labor with a retirement of 10% of salary.

The next three cases are related to the summon of journalists to the prosecuting bodies. In late February 2001 the General Prosecutor of Armenia was addressed by the National Scout Movement with a petition to institute criminal proceedings versus the Chief Editor of "Haikakan Zhamanak" Nikol Pashinian and journalist Armenak Mikayelian on Article 131 (libel) of the RA Criminal Code. The reason for this was the piece "Coup D'Etat Occurred on October 27". It,

in the opinion of the applicant, contained untrue information that the Scout Movement, established by "Dashnaktsutiun" part, is a terrorist organization and is at the backstage of the tragic events at the Armenian Parliament. In March Nikol Pashinian was summoned to the Prosecutor's Office of Center and Nork-Marash communities of Yerevan to testify on the facts named in the article. According to Pashinian, he "presented all the information sources to the Prosecutor's Office and 99% of the data were taken from the materials of the case on the terrorist attack of October 27 in the Parliament". After this the case was dismissed.

In the same "Haikakan Zhamanak" newspaper on February 21, 2001 an article by journalist Vahan Ishkhanian "Corruption and the Presidents' Office" was published, where the patronage shown by the Advisor of the Armenian President to Converse Bank was described. Allegedly, the patronage was the reciprocal favor in reply to the Jeep car presented to the Advisor by the bank. The Chairman of the Board of Converse Bank Smbat Nasibian addressed the Prosecutors' Office demanding to institute criminal proceedings on libel charge. On March 26 Vahan Ishkhanian was summoned to the Prosecutor's Office to give explanations, after which the case was dismissed.

On May 10, 2001 the Military Prosecutor's Office of Armenia sent a subpoena to the Chief Editor of opposition "Chorrord Ishkhanutyun" newspaper, the Chairwoman of women's party "Shamiram" Shogher Matevosian. The summon referred to publications of the newspaper on the attitude of the authorities to the terrorist attack at the Parliament on October 27, 1999. The representatives of the Prosecutor's Office demanded to disclose the names of the authors of the piece. Yet the Chief Editor declined this demand, saying she was to bear the responsibility for the pieces as a manager.

A few months before, on March 28, 2001 the same publication was deprived of property used since 1996. The representatives of the RA Ministry of Interior, visiting the editorial office of "Chorrord Ishkhanutyun" announced that the equipment was owned by their structure and was given for the newspaper's use by one of the former Ministers. On these grounds three carpets, two refrigerators, telephones, a fax machine, a VCR, a walkie-talkie and other property were taken away.

Experts qualified the refusal of private "Gind" publishing house to print "Haikakan Zhamanak" newspaper as pressure on opposition publication. According to the Chief Editor of the daily Nikol Pashinian, he was informed by "Gind" on May 16, 2001 that the publishing house refuses to print the newspaper because the debts of the edition (about 700,000 drams or \$1,300). According to the agreement between the parties the publishing house was to give at least a month's notice about the intention to stop the publication. The Chief Editor proposed to fully repay the debt not to suspend the publication, however was refused, and this time on the motivation of paper shortage. The administration of "Gind" also refused the attempts of the Chief Editor to solve the paper problem. All this gave Nikol Pashinian grounds to suppose that there were other, more serious reasons for the refusal to print the newspaper. Yet the Director of "Gind" Karen Avetian insisted on the version of financial difficulties.

This incident appeared in the center of attention of media and international organizations, primarily because "Gind" private publishing house was established with the assistance of Eurasia Foundation to eliminate the monopoly of "Tigran Mets" publishing house and minimize the financial and economic pressure on media. On May 19 the publication of "Haikakan Zhamanak" renewed, but at "Noy" publishing house.

Notably, the fiscal services were also used to exercise pressure on media and their founders. Thus, on May 16, 2001 a tax revision of independent "Ogostos" press dissemination agency, also the founder and publisher of "Chorrord Ishkhanutyun" newspaper, started. Having arrived at the office of "Ogostos" at the end of the working day, the representative of the tax inspection did not present the written warrant of the Minister of State Revenues, as stipulated by the law. They confiscated a significant part of "Ogostos" documents and induced the executive director of the agency to write a declaration of the activities of the agency, as they dictated it. The official order of the Minister of State Revenues was dated May 18, therefore, the revision could only have started on May 23.

To justify their actions, the Ministry of State Revenues made a statement, published on May 19 in "Aravot" newspaper that quoted a thesis: "what is not prohibited by the law, is allowed". However Article 5 of the RA Constitution stipulates, that the state bodies and officials are only competent to perform the actions specified by the law.

On June 27, 2001 "Ogostos" agency filed a complaint with the RA Ministry of State Revenues on the illegitimacy of actions of its staff during the revision. Having received no answer, "Ogostos" addressed a suit to the Commercial Court. The agency challenged the legitimacy of a demand of the Ministry about the payment of 8 million drams (about \$14,000) — a fine charged for the violations revealed by the revision. During the hearing the conclusion of the RA General Prosecutor's Office was read out, according to which, the materials prepared by the Ministry on the activities of "Ogostos" were compiled with violations of the legal norms. On January 4, 2002 the court ruled to secure the suit. The Ministry of State Revenues made a challenge with the RA Court of Causation that was refused on February 22, 2002. The restoration of justice took over 8 months.

On the night of May 17 the car of well-known Bulgarian journalist Tsvetana Paskaleva who works in Armenia was damaged. Those guilty were not found. Notably, in all the five cases of spoilage of property owned by journalists and editorial offices registered during the period of interest, the offenders remained unknown.

On September 7, 2001 the representative of the Interior Affairs Division of Arabkir community of Yerevan took away the camera of the correspondent of "Haikakan Zhamanak" daily Arman Karapetian who was shooting the arrest of one of the founders of the edition, the leader of opposition party "Zhoghovrdavarakan Hairenik" ("Democratic Homeland") Petros Makeyan. Later in the evening the camera was returned to the journalist.

In the evening of September 10, 2001 the editorial office of independent "Ashtarak TV" company (Aragatsotn region) was visited by representatives of tax inspection. Having disclosed the absence of broadcast license, the inspectors announced it was necessary to stop the broadcasts, having thus exceeded their authority. In the opinion of the head of the TV company Vahram Botsinian, this unexpected visit was related to the planned appearance of an opposition politician Ashot Manucharian on "Ashtarak TV". At the 22nd minute, as Manucharian was answering the viewers' questions, the electricity was turned off at the TV station, The representatives of the law enforcement bodies asked the staff to leave the offices and surrounded the building.

The next day "Ashtarak TV" went on air, but on September 12 the broadcasts were stopped again. On this day the representatives of the Republican Telecommunications Center and the RA Ministry of National Security sealed the equipment, motivating their actions by the absence of broadcast license. Soon "Ashtarak TV" resumed its air. However, on November 7 the representatives of the agencies above again demanded to stop the broadcasts for the same reason. Vahram Botsinian related the occurrence to the discontent of the head of the regional administration about the fact that opposition politicians speak on the air of "Ashtarak TV". Some time after these events the TV company did resume the air, though.

An example of pressure on media, caused by inadequate perception of criticism by an official is the criminal case instituted by the Prosecutors' Office of Center and Nork-Marash communities of Yerevan against the Chief Editor of "Haikakan Zhamanak" opposition daily Nikol Pashinian by the suit of the Head of the RA Main Civil Aviation Department (RA MCAD)Պ Hovhannes Yeritsian. The absurdity of the suit was so obvious that the case immediately got the name of "The Case of Imbeciles".

Hovhannes Yeritsian addressed the court due to a piece published in "Haikakan Zhamanak" on November 6, 2001. It, in particular, quoted the minutes of a working meeting at the RA MCAD. According to the newspaper, Hovhannes Yeritsian commissioned his deputy to find out and inform him as to "how, bypassing the security rules, the planes have on board such periodicals that present the authorities in a wrong light". The editorial postscript said that "last night an urgent working meeting at "Haikakan Zhamanak" was held during which the Chief Editor commissioned the journalists to find out and inform him how imbeciles find their way to the system of state administration". Judging from the reaction, the head of the MCAD took this to be a personal insult.

On March 1 Nikol Pashinian was introduced charges on insult (Article 132, Part 2 of the RA Criminal Code). "The Case of Imbeciles" had got much public attention. Media, professional associations, a number of parties and public organizations of the country spoke out in support of Nikol Pashinian and with criticism of the action of the prosecuting bodies. On March 11 the lawyers of Nikol Pashinian addressed the court of primary jurisdiction of Center and

Nork-Marash communities of Yerevan with a complaint of illegal actions of the Prosecutor's action — the institution of criminal proceedings, the obligation to remain in place of permanent residence as a preventive punishment and the introduction of the charges. On session of May 20 the court recognized the actions of the Prosecutor's office to be legitimate and dismissed the claim.

A number of actions to support Pashinian were undertaken by "Aravot" newspaper. In particular, on March 12 it published a photograph of Hovhannes Yeritsian with a text, identical to the one that had insulted the head of MCAD. The Chief Editor of "Aravot" initiated a journalistic investigation with a conventional name of "Where Do Imbeciles Come From?" As the publication reported, all eight correspondents of "Haikakan Zhamanak" addressed the Prosecutor's Office with a demand to institute criminal proceedings against them, as they are the authors of the unsigned piece that caused the charges of their Chief Editor.

However, on April 11 the criminal proceedings against the Chief Editor of "Haikakan Zhamanak" were stopped. This decision was made by the Prosecutor's Office on the basis of Article 18, Clause 4 (the unconfirmed suspicion is interpreted to the benefit of the defendant) and Article 35, Clause 2 (the involvement of the defendant in the crime is not proved and the possibilities for obtaining new proofs have been exhausted) of the RA Criminal Procedural Code.

Another loud court process also deserves attention. ON February 13, 2002 at the RA Commercial Court hearings of a suit of a major Armenian Bank HSBC-Armenia against the newspapers "Golos Armenii" and "Yerkir", the organ of "Dashnaktsutiu" party, started. The claim was to refute information, disseminated on October 29, 2001 by "Noyan Tapan" news agency and published the next day in the publications mentioned.

The claim of HSBC-Armenia to newspapers were only rounded by the consideration that the new agency is allegedly not a mass communication medium. This statement surprised the whole journalistic community: though the RA Law "On Press and Other Media Outlets" was not specific enough in regulating this issue, the most rudimentary legal logic and the international practice say that the newspapers do not have to verify the information disseminated by a news agency.

Moreover, the latter, according to the commonly accepted norms, is also a medium.

Five days later the Commercial Court secured the petition of the attorney of the respondents about the involvement of "Noyan Tapan" in the proceedings, however resolving that the news agency will be presented not as a party but as a third party on the side of the respondents. At the court session of February 25 the head of "Noyan Tapan" Tigran Harutiunian confirmed that the news agency was registered with the RA Ministry of Justice as a mass communication medium and called on HSBC-Armenia to revoke the suit versus the newspapers and deal with "Noyan Tapan" directly. He also announced the readiness to disseminate the refutation, should the fallacy of the information, reprinted by newspapers be proved.

However, contrary to the proofs presented that the production of "Noyan Tapan" news agency is a mass communication medium, and therefore, it is the agency that bears responsibility for the information disseminated, the Commercial Court took the banks' side and obliged the newspapers to publish a refutation. Thus, a precedent was established, that most probably has no analogues in the civilized judicial practice: following the rationale of the decision made, the media of Armenia from now on had to verify any reports of the news agencies. It should also be noted that the interests of HSBC-Armenia bank were defended in court by lawyer Haik Harutiunian, the brother of the RA Justice Ministers, who has the second decisive vote (after the President) in the appointment of the judges.

Later the newspapers "Golos Armenii" and "Yerkir" challenged the court ruling with the Chamber for Civil and Commercial Cases of the RA Court of Cassation. At the very first session HSBC-Armenia bank accepted the proposal of the attorney of the respondents on the reconciliation agreement. It was announced on May 3, at the next court session. According to the document, signed between the parties, "Noyan Tapan" took the commitment to disseminate refutation of the report of October 29, 2001 within three days, and the print media were to publish it. The refutation was placed in the coming issues of "Golos Armenii" and "Yerkir" newspapers and was accompanied by editorial comment. In particular, "Golos Armenii" noted that the newspaper proposed that the bank should address its objections to the author information itself, "Noyan Tapan" news agency, however, the bank preferred the litigation.

The amendments and additions to the RA Law "On State Duty", stipulating imposing an annual state duty for the production and broadcasting of TV and radio programs, passed by the parliament and in force since January 1, 2002, can be viewed as an attempt to exercise financial pressure on media. This is how 18 broadcasters of the country and Internews Armenia public organization qualified these amendments in their address to the RA President, the Chairman of the National Assembly, the Prime Minister, the chairmen of the specialized Parliament Committees and the National Commission on Television and Radio. The broadcasters noted that Article 53 of the RA Law "On Television and Radio" stipulates charging license fee for airing TV and radio programs, therefore, charging another duty means double payment for the same activity. Besides, the amendments made, in the opinion of the heads of electronics media, ran contrary to Article 47 of the broadcast law, according to which it is only the airing of the programs and not their production is subject to licensing. It is with this argument in mind that the authors of the address demanded to re-consider the amendments.

Owing to the active intervention of the broadcast media and Internews the situation was corrected. On April 3, 2002 the National Assembly passed new amendments to the RA Law "On State Duty". The provision on charging state duty for the production of TV and radio programs, and the payments for their airing had varying tariffs — depending on the media type and its coverage.

The facts of political pressure on media were most manifest during the coverage of election campaign of 2003, particularly, the run-up for the presidential elections. Thus, on February 23 "Shant" TV company stopped airing the weekly "Ditak" program produced by Internews Armenia program in the cooperation with Armenian broadcast media. "Ditak" was aired on the evening Sunday air of "Shant" and twenty other regional companies of the country since 2001. However, on that day "Shant" TV company for the first time refused to let it on air. The regular issue of "Ditak" was devoted to the presidential elections on February 19, in particular, the violations made during the voting and the vote count. Notably, a number of pieces on that were produced by the journalists of "A1+" TV company, deprived of a broadcast license.

The pieces produced by the correspondent of "Epikentron" news program of the private "Kentron" TV company Nane Ajemian about the second round of the presidential election campaign caused the discontent of the election staff of the incumbent head of the state. After a telephone call to "Kentron" Nane Ajemian was offered to take a leave till the end of the election campaign. This was announced by the journalist in an interview to "Aniv" program of Internews Armenia public organization.

In March 2003 private "Aravot" newspaper was involved by banks into two litigation processes at the same time. The suit of Central Bank of Armenia, directed to the court of primary jurisdiction of Center and Nork-Marash communities contained a demand to refute two articles that told about the abuses made by the CB officials. In another suit, considered by the RA Commercial Court, "Ardshinbank" demanded that material damage be compensated, as caused by a number of articles, published by the newspaper almost ten months before. In both cases after several court sessions the parties signed reconciliation agreements that stipulated, nevertheless, the publication of the position of the opposing party.

From the point of view of the court litigations related to the media activities the following episode is noteworthy. On October 14, 2003 at the court of primary jurisdiction of Center and Nork-Marash communities a hearing on the suit of the Chief Editor-Director of "Armenian Encyclopaedia" publishing house Hovhannes Ayvazian versus the correspondent of "Aravot" newspaper Satik Seyranian "on refuting of information, discrediting the honor and dignity of a citizen, in the media" The article of the journalist told, in particular, about the deal on the sale of the building of "Armenian Encyclopedia" to a bank for which, as the author said, not only the Government is to blame but also the management of the publishing house. ON September 13 "Aravot" published a letter by Hovhannes Ayvazian, where he called all the facts mentioned in the article fictitious and demanded a public apology from the author, otherwise "the conversation will continue in court". Satik Seyranian wrote in her comment to the letter that she was not going to apologize and was ready to present additional facts.

At the court session Hovhannes Ayvazian demanded that the journalist present these additional facts. Since this demand exceeded the suit, the court decided to decline the suit as a whole.

The deprivation of "A1+" and "Noyan Tapan" TV companies of air

The Armenian TV companies have a far greater audience, and, therefore, have better opportunities to influence the public opinion, than the print media. Obviously, due to this circumstance the authorities strive to retain control over the broadcast sphere, which — in the context of imperfect legislation — bring to ousting, isolation of the unwanted TV companies. One of the saddest pages in the media history of the independent Armenia is related to the loss of air by "A1+" and "Noyan Tapan" TV companies. In January 2001 the Republican Telecommunications Center by a unilateral decision demanded that "Noyan Tapan" moves to another frequency. This also meant to narrow down the coverage of the TV company. After long debates "Noyan Tapan" had to concede and move to another frequency.

On September 14, 2001 the programs on "Noyan Tapan" TV channel stopped as a result of the conflict between the parties. The channel was established as a joint project of "'Noayn Tapan' Alik" and "Lotos" TV companies (the latter was owned by "Ararat-Service" LLC). "Lotos" presented and rebroadcast in Armenia the Russian TV-6 TV channel, whereas "'Noayn Tapan' Alik" provided the equipment, the studio, the staff etc. In late August the General Director of "Lotos" suggested that the programs produced by "Noyan Tapan" be removed from air, and this was the end of the partnership.

At the end of the same month a public committee to protect "Noyan Tapan", trying to get the broadcast resume was established. Owing to journalistic solidarity displayed by "A1+" TV company the newscasts of "Noyan Tapan" were aired twice a day on its air.

On April 2, 2002 the National Commission of Television and Radio of Armenia announced the results of the broadcast licensing competition announced in February for 4 UHF frequencies in Yerevan and confirmed the worst fears of the media and journalistic organizations, having refused a license to one of the first private broadcasters (founded in 1991) the only news channel with a 24-hours air, as well as "Noyan Tapan" TV company.

On the evening of the same day "A1+" received a notification from "Television Network of Armenia" SCJSC that informed about the

stoppage of the broadcasts at midnight. Saying good-bye to the viewers at 24.00, "A1+" informed that its programs can still be viewed by AATV cable network. However, 12 minutes later AATV stopped the broadcasts of "A1+" programs. According to the director of "A1+" Mesrop Movsesian, AATV violated the contract. In early September 2001 AATV got a license only for the construction and maintenance of cable systems and not for broadcasting and this circumstance could have become a reason for exercising procedure on it and demanding to violate the agreement with "A1+".

The refusal to grant licenses to "A1+" and "Noyan Tapan" TV companies caused a strongly negative response of journalistic community and international organizations. In particular, on April 2 Yerevan Press Club and Internews Armenia made a joint statement stressing that the decision, made by the National Commission on Television and Radio, "politicizes the issue and can create a precedent of pressure and intimidation of unwanted media". Ousting "A1+" out of the broadcast spheres, as the statement said, "can impoverish the TV air of the country, restrict the volume of pluralistic information and the possibility to express various viewpoints". By the assessment of journalistic associations, the situation in place with "A1+" and "Noyan Tapan" TV companies is a consequence of imperfect legislation that allows for arbitrary formation of the National Commission on Television and Radio and re-shaping the broadcast sphere, ignoring the interests of the acting and established TV companies.

Unfortunately, the authorities paid attention only to the fact that the opposition forces responded to the stoppage of broadcasts by the two TV companies and qualified the tumult raised as a political manipulation. Before the results were announced the Armenian president Robert Kocharian confessed he would like to see "A1+" on air, but he wished at the same time that the staff of "A1+" do not become a tool for those who seeks to destabilize the situation in Armenia. On April 5 "A1+" declined the proposal of the head of the state to meet the staff, motivating the refusal saying that "the meeting would be more effective after the problem is solved in a legal field".

On April 5 the proposal of the Public Television of Armenia to provide its airtime to "Ayb-Feh" newscast of "A1+" TV company. "We want to keep our face on our frequency", the Director of "A1+" Mesrop Movsesian said.

Several days after the journalistic community of the country broke into two wings, and the situation of "A1+" became a certain catalyst for the process. On April 10 the statement of 7 broadcasters, 7 newspapers and 3 news agencies of Armenia was released, in which, while regretting the failure of "a1+" in the competition, the signatories qualified the rallies and protest actions held by "certain political forces as an attempt to move the media problems of a purely legal nature into a political dimension, to entangle them in pre-election games and present Armenia as an undemocratic country to the world community to attain their own political goals".

On April 15, 2002 as a response to the "statement of 17" another statement was adopted — that "of 18" media and journalistic associations of the country, including "A1+" TV company. The address said that by means of the heads of 17 media "the authorities aim at finally breaking down the journalistic solidarity, to break the information field and set the media of against each other" and called on all the colleagues "join in the fight against the restriction of freedom of expression".

"A1+" and "Noyan Tapan" decided to restore their rights to broadcasting by litigation. The founder of "A1+", "Meltex" LLC challenged with the RA Commercial Court both the process of broadcast licensing Constitution and their results. As a measure of securing the suit, "Meltex" LLC filed a petition to continue broadcasting until the litigation ends. The petition was immediately declined. (It should be noted that a proposal to stipulate the right of a broadcaster that has a lost the license and is challenging the results in court to continue broadcasting until the court ruling was presented during the discussion of the draft of the RA Law "On Television and Radio". However, it was not adopted. Later some other attempts to introduce amendments into the acting law failed, too).

After three sessions the Commercial Court ruled to refuse the suit of "Meltex" LLC, despite the fact that the plaintiff pointed out the arbitrary interpretation that the National Commission gave to a number of legal norms. By doing this the court actually established a dangerous precedent, having thus allowed the National Commission to interpret the legal norms as it pleases. IN future this opportunity was fully used.

On May 10 "Meltex" challenged the ruling of the Commercial Court with the Chamber of Civil and Commercial cases of the RA Court of Cassation. Here, at the very first session the suit was rejected. The same was the lot within the same time span of "Noyan Tapan" TV company in both court jurisdictions.

"Meltex" LLC addressed the Commercial Court also with a suit against "Television Network of Armenia" SCJSC. On April 29 the plaintiff demanded that the resolution of this institution about the stoppage of "A1+" broadcasts, passed on the grounds of a letter of the National Commission on Television and Radio, be abolished. The suit was justified by an agreement about the broadcasting of "A1+" programs that was violated by the "Television Network of Armenia" in the early morning of April 3. Yet, neither the RA Law "On Television and Radio", passed in October 2000, nor the Statutes of the National Commission on Television and Radio stipulate a specific mechanism of air stoppage when the broadcaster is refused a license. On May 6 the suit was accepted by the court and refused on the very first session of May 17. On June 28 the appeal of "Meltex" LLC with the causation body was refused as well.

In June 2002 the statement of the European Union as resulting from a regular report of the OSCE representative on media freedom, the report of "Ago Group" on Armenia, the statement of global campaign for free expression "Article19" voiced concern over the situation with "A1+" and "Noyan Tapan" TV companies, the need to review the questionable provisions of the RA Law "On Television and Radio" and the conductance of new competitions to license broadcasting with the participation of the companies deprived of air was voiced.

On September 26, 2001 at the PACE session the Committee of Compliance of the CE members countries with their commitments presented reports on Armenia and Azerbaijan. The document on Armenia, the section on freedom of expression, noted in particular that the acting law on television and radio is imperfect, does not meet the standards of the Council of Europe and causes the strong discontent of the media themselves, primarily because the members of the Council of Public TV and Radio Company and the National Commission on Television and Radio are appointed by the President of the country.

Having gone through all the national court bodies, the management of "A1+" TV company addressed the European Court of Human rights. On November 1 the suit of "Meltex" LLC versus the Republic of Armenia was accepted for consideration, However as far back as on October 3 the representatives of European Court of Human Rights Lucius Wildhaber, on visit in Yerevan, answering the questions of the journalists of when the hearing of "A1+" case will start, said that this can occur only as the case queue progresses, within two years approximately, and the court will only undertake its consideration, should it have a judge from Armenia. The RA representative at the European Court of Human Rights was only appointed in mid-2003.

It soon appeared that both TV companies will be unable to cover the presidential elections of 2003. On November 8, 2002 the National Commission on Television and Radio did not accept the bid of "Noyan Tapan" to participate in the broadcast licensing competitions for 5 UHF, announced on October 15. The refusal had the motivation that the bid did not specify the frequency claimed by the TV company. However, "Noyan Tapan" was not provided an answer, in which, according to the law, the deficiencies of the bid should have been specified for the TV company to eliminate them in 10 days. Thus, the National Commission violated items 10 and 11 of the broadcast licensing competition procedure.

On November 15 "Noyan Tapan" TV company filed a suit with the RA Commercial Court versus the National Commission on Television and Radio. As a measure of securing the suit a petition was submitted suspend the competition until the court ruling comes into force. The reason behind it was that the court ruling comes into force 15 day after it is made, whereas the bids were to be considered by the National Commission on November 19. The petition was secured, but alarmed "A1+" TV company, another bidder in the competition. The head of "A1+" Mesrop Movsesian noted that the litigation can procrastinate, which is beneficial to the authorities, as the TV company will not have a chance to cover the presidential elections in February 2003.

Recognizing the existence of this danger, the head of "Noyan Tapan" Tigran Harutiunian made a written address to the Chairman of the National Commission on Television and Radio with a proposal to sign a reconciliation agreement before the court proceedings start. The

proposal ran: "a) National Commission accepts the documents of "Noyan Tapan" for the participation in the competition for 5 UHF's in Yerevan and during the coming days schedules the disclosure of the bids and the announcement of the results of the competition; b) "Noyan Tapan", on its behalf, obliges to refrain from further litigation's on the issue". National Commission declined this proposal on the grounds that signing such a reconciliation agreement contradicts the procedure for the broadcast licensing competitions and violates the rights of other bidders.

On December 2 the Commercial Court secured the suit of "Noyan Tapan" and obliged the National Commission to accept the documents of the TV company to participate in the competition, with the frequency specified within three days after the ruling came into force. However shortly afterwards the National Commission challenged this decision with the RA Court of Cassation, thus justifying the fears of the journalistic community about the intentional procrastination of the proceedings before the elections.

Only after the supreme judicial body declined the challenge of the National Commission, "Noyan Tapan" TV company could only present a bid to participate in the competition, this time with the frequency specified — 58th UHF. Meanwhile, additional input into the procrastination of the competition was made by "Dar 21", "ARME-NAKOB", "TV 5", "Yerevan" and "EV". They now addressed the Commercial Court with a suit versus the National Commission, demanding to return their bids, as the information in them had allegedly become obsolete because of the two-month delay in the competition and needs revision.

This resulted in even greater delay of the competition and actually deprived "A1+" and "Noyan Tapan" of a potential chance (if they received a license) to cover the parliamentary elections of 2003. Anyhow, after the two declined proposals of reconciliation agreement, the direction of the case to the Court of Cassation and back — for repeated consideration, the five broadcasters revoked their suit.

The competition was held after 8-month delay. By its results, announced on July 18, 2003, "A1+" and "Noyan Tapan" TV companies were not granted licenses again. The former TV company had been claiming three frequencies...

Going to the court did not get "A1+" anywhere again. Two more broadcast licensing competitions were held till the end of the year, having the same result for the TV companies deprived of air. In the course of a year and a half "A1+" took part in four competitions, "Noyan Tapan" — in three, and in almost none of them did these companies arrive at their aim.

The National Commission on Television and Radio ignored the solid professional experience, the public opinion, the appeals of the local journalistic associations and international organizations. The absence of "A1+" and "Noyan Tapan" from air was noted by international observers as one of the most significant deficiencies of the presidential and parliamentary elections that were held in Armenia in 2003. This "negatively affected the broadcast sphere and worsened the shortage of balanced information sources", the observers of OSCE/ODIHR noted.

In the address of OSCE Representative on Media Freedom Freimut Duvé the absence of "A1+" and "Noyan Tapan" from the air was qualified as a proof of continued restriction of freedom of expression in Armenia. The report of PACE monitoring group ("Group Ago") of September 8, 2003 the return of these companies to the broadcast sphere was considered in the context of the commitment assumed by Armenia upon its accession to the Council of Europe. The criticism of "Group Ago" was caused in particular by the provisions of the RA Law "On Television and Radio" on the formation of bodies that regulated the electronic media activities.

Violation of the right to receive and impart information

RA Law "On Freedom of Information" came into force only in November, 2003, and the Law "On Mass Communication" — even later, in January 2004. For this reason it is still too early to speak about their practical application and their influence on the state of affairs in the sphere. Under the period of interest the situation was partly regulated by Article 24 of the RA Constitution that guaranteed the freedom of expression and some provisions of the RA Law "On Press and Other Media Outlets" that was abolished after the adoption and the enforcement of a new law — "ON mass Communication". Nevertheless, the norms that referred to the right to receive and impart information were often violated.

Let some of these facts be considered.

In January 2001 the court of primary jurisdiction of Artashat city of Ararat region received a suit of Marineh Gabrielian versus "Ararat" newspaper to protect honor and dignity. In June 2000, when Marineh Gabrielian was running in elections for the head of the village, the newspaper published a letter signed by 115 residents of Khachpar village that contained compromising information — among other information, it noted that in 1993 Gabrielian kept an Azerbaijani prisoner of war and later, having established contact with his relatives, sold him. In October the same year the editorial office received Gabrielian's demand to publish a refutation. However the text did not specify what and on which grounds must be refuted. IN this regard the newspaper published the photocopy of the letter, mentioning in the postscript that it was to reflect the opinion of 115 villagers, and Gabrielian, on he behalf, has a right to bring her own argument that newspaper is ready to publish. Marineh Gabrielian, who lost the elections, filed a suit demanding to oblige the newspaper to publish a refutation.

The proceedings set off in January 2001 in Artashat, later, upon the demand of the plaintiff, who several times challenged the judges, the litigation was moved to another city of Ararat region — Masis, and later — to Echmiadzin, the court of primary jurisdiction of Armavir region. Here the signatories of the letter, summoned as witnesses, confirmed the information in the letter as facts. On the session of September 12 the respondent — the Chief Editor of "Ararat" newspaper Karineh Ashughian — made a petition to suspend the lengthy litigation and to send the case to the General Prosecutor's Office to investigate the main subject of the dispute: did Marineh Gabrielian keep an Azerbaijani prisoner of war and sell him to his family? If so, there was actually nothing to refute. If not, the newspaper, as Ashughian assured, would publish the refutation. The court secured the petition.

The case sent to the RA General Prosecutor's Office was redirected to the Prosecutor's Office of Ararat region, where, after several months of investigation a very strange conclusion was made. In particular, it was determined that the brother-in-law of Marineh Gabrielian "under unclear (...) circumstances delivered from Mountainous Karabagh to Khachpar an Azerbaijani of 18-20 to

exchange him for his son, taken as a prisoner of war". But since the brother-in-law of the plaintiff is out of Armenia, the rest of the circumstances remained unclear, too. As the conclusion of the Prosecutor's Office said, "there is no proof of the sale of the prisoner, (...) he had not been identified (...). In the course of 8 years the prisoner of war did not report the offenses being committed against him to the RA law enforcement bodies". The last phrase reveals that the Prosecutor's Office of Ararat region did not actually determine anything (one cannot seriously expect that the former Azerbaijani prisoner of war is going to address the Armenian investigative bodies). By the rationale of the investigator, since there have been no complaints, there has been no prisoner of war, though the residents of Khachpar village continued to maintain the contrary.

Proceeding from the conclusion of the Prosecutor's Office the corrupt of primary jurisdiction of Aramavir region on June 24, 2002 passed a decision to secure the suit and oblige "Ararat" newspaper to publish a refutation. As the Cheif Editor Karineh Ashughian confessed, she was tired of the long proceedings and so she did not file a challenge with the Court of Appeals, even though she was certain of having committed no law infringements. The refutation was published on July 17, 2002.

Actually in Armenia a dangerous precedent was set, when the newspaper was obliged in court to refute information which had been confirmed by 115 people. And if the law enforcement bodies were unable to disclose all the circumstances of the case, this does not mean the information published was untrue. The editorial office, having identified the signatures of the authors of the letter and having again asked the residents of the village, exhausted the possibilities to verify the facts. Nevertheless, it lost the case.

However, the conflict did not end with that. The court decision, as it seemed, had been so encouraging for Marineh Gabrielian that she later filed a new suit against the Chief Editor of "Ararat" Karineh Ashughian, this time demanding to compensate the material damage incurred during the litigation's between the parties of 2001-2002. The hearing on the case started on November 13, 2003. At the third session it was decided to leave the case unconsidered because of the failure of the plaintiff or her attorney to appear in court. Notably, previously the reciprocal suit of Karineh Ashughian on the protection of honor, dignity and business reputation was declined.

On October 9, 2001 the Association of Investigative Journalists addressed the head of the State Customs Committee at the RA Government with a written inquiry about the information, necessary for a journalistic investigation on the use of non-metallic mines. The journalists were particularly interested in three questions: 1) which organizations specifically, engaged in the exploitation of non-metallic mines, export their production; 2) what is the export volume of this production; 3) how much was paid as custom duties since 1997 to this day? The written answer, signed by the Deputy Chairman of the Committee, contained a refusal to provide the information requested, quoting the provisions of the RA Customs Code to protect the service secrets.

On December 18, 2001 at the court of primary jurisdiction of Center and Nork-Marash communities of Yerevan the first session on the suit of the Association of Investigative Journalists versus the head of the State Customs Committee with a demand to answer the questions posed within 10 days was considered. The suit was refused, and the Association challenged this decision with the secondary jurisdiction. At the session of RA Court of Appeals on February 1, 2002 the representative of the plaintiff announced that the two first questions were not answered by the customs officials, because their agency does not have this information. The court made a ruling of partial securing the demand of the Association, obliging the Customs Committee to answer the third question of the journalists.

During the period of interest an unprecedented for Armenia case of a breach of a right to impart information occurred - in a mysterious way the whole daily print run of a periodical disappeared. Thus, on October 31, 2002 the regular issue of "Aravot" newspaper did not get to the reader. The publishing house had transferred the print run to "Haymamul" press dissemination agency, however, later neither the subscribers, nor the stall of the agency or other organizations received their copies. The Deputy Director of "Haymamul" Arshaluys Manukian was unable to clarify the occurrence. According to him, the whole print run was bought, yet he was unable to name the buyer.

"Aravot" newspaper proposed its version of the incident, according to which the disappearance of the print run was related to the article published in that issue titled "Those Close to the Prime Minister Abuse". The piece told in particular about the illegitimate actions of

senior officials during the privatization of a resort complex in Tsaghkadzor. IN the opinion of "Aravot, the delivery of the issue to the readers was obstructed by people, who were concerned with the publicity of information that compromised them.

The joint statement of Yerevan Press Club and the Journalists Union of Armenia the disruption of newspaper dissemination was qualified as a crime that seriously violates the right of citizens to receive information and Article 24 of the RA Constitution, as well as the international agreements signed by Armenia. The journalistic associations demanded that the law enforcement bodies find punish those guilty.

However, despite the assurances of the Armenian Prime Minister Andranik Margarian that the reasons of the incident will be disclosed and those guilty held to account, everything was confined to a punishment of the middleman, "Haymamul" agency. The head of the department for supplies of the agency was dismissed, the Deputy Director received an administrative penalty, however, was later appointed to the position of the director the agency.

"Aravot" newspaper responded to the measures taken by a confession that the publication" still considers 'Haymamul' to be a reliable partner and is satisfied with the many-year work of the head of supplies department...". Commercially the publication did not incur losses, as the agency had fully paid for the lost print run. The editorial staff only expressed its regrets that the readers were deprived of up-to-date information.

In January 2002 the employee of "Target" electronic newspaper Lilit Seyranian published an article "The Price of Blood" on the murder, committed in autumn 2001 at Yerevan "Aragast" caffè by the bodyguard (already former) of the RA President. The article with a reference to the unnamed member of the Supreme Body of "Dashnaksutiun" party maintained that the defendant had given the brother of the deceased \$90,000 as a compensation for not opposing the "scenario" of the court proceedings. The latter filed a suit against the newspaper, demanding to either publish a refutation or give proofs, in particular, identify the information source.

At the very first session, that was held in November 2002, the author of the article refused to identify the source, and the court passed a

ruling demanding that "Taregir" publish a refutation, which was done by the publication. It should be noted that the demand to a journalist and medium to disclose the information source was posed for the first time in the judicial practice of independent Armenia.

The violations of the right to receive and impart information occurred also during elections 2003. Thus, many members of local election commissions prohibited "A1+" TV company reporters to be present at the precincts, on the motivation that the TV company had no broadcast license. As a "ground" for this the order of the Chairman of the Central Election Commission was quoted.

Since the evening of February 26 up to March 17 the Armenian viewers were deprived of the possibility to watch the programs of Russian NTV company. "Paradise" company, rebroadcasting NTV explained that the programs were stopped for technical reasons. However, there is another opinion, according to which the rebroadcasting was stopped due to the pressure of the Armenian authorities that disliked the coverage of opposition rallies in Yerevan in the newscasts.

On the day of the second round of presidential elections, on March 5, 2003, the members of a number of precinct commissions (and sometimes unknown people) obstructed the performance of professional duty by the journalists of "Ayb-Feh" newspaper and the homonymous news agency of "A1+" TV company: it was prohibited to make shooting, to interview the proxies, be present at the vote count. The representative of a precinct commission refused to provide information to the reporter of "Noyan Tapan" news agency.

This report does not allow presenting all the violations of rights of journalists and media over the past three years. The facts named here, many of which have been at the center of public attention only serve as an illustration of the climate that Armenian media in general and their representatives in particular work in. And the establishment and development of "fourth estate" in the country very much depends on whether favorable conditions for the media activities will be set.

Towards democratic society

The new RA Criminal Code, in force since August 1, 2003, still stipulates criminal persecution for libel and insult (now these are Articles

135 and 136 respectively), whereas in the majority of European countries similar offences, when proved in court, are a civil charge. The demand of decriminalization of libel and insult was made to Armenian authorities not only by local journalistic and other public organizations but also, in particular by "Group Ago". In other words, it is also considered in the context of the commitments assumed by Armenia to the Council of Europe.

As it can be seen from the examples above ("The Case of Imbeciles" and others), despite the criminal libel and insult provided for by the law, these provisions have not been used by the law enforcement bodies and the courts against journalists. The retainment of these articles in the RA Criminal Code is usually motivated by the authorities by the need to increase the accountability of the journalists for their pieces. There an objection should be made: to ensure this the criminal persecution is not necessary, because in the matter, as commonly accepted in the international practice, the application of civil law can be quite effective. Besides this, professional and ethical norms exist along other effective mechanisms for the solution of the problem.

In this regard another tumultuous story must be remembered. On November 14, 2002 private "Or" newspaper published an articles by its head Gayaneh Mukoyan with photographs on the intimate life of the Chief Editor of "Aravot" newspaper Aram Abrahamian. This publication was immediately strongly condemned by the journalistic organizations, the majority of Armenian media and was qualified as insolent, cynical intrusion on privacy. On November 15 a number of media and professional associations of the country passed a joint statement saying in particular that "by this publication the newspaper put itself out of the journalistic community and no longer exists for us as a medium". On the same day Gayaneh Mukoyan was expelled from two organizations at once: the National Press Club and the Association of Investigative Journalists. "Or" correspondent Susanna Tonoyan thought it impossible to continue working at a publication that indulged in such pieces.

Notably, in the next issue of the newspaper Mukoyan again addressed the same subject, but this time the article was accompanied not by the scandalous photographs but by white spots. This publication caused even greater rejection, because the author was per-

sisting in motivating this step by supreme goals, namely the fight for the morality of the journalistic profession. At the same time the journalistic community took the incident to be a manifestation of the fight of oligarchic groups for control over media, as intensified before elections and as a dangerous precedent that could have turned into a war of compromising materials.

It should be noted that in the report, presented at the PACE session on September 26, 2002 by the Committee on the honoring of commitments by the countries- members of the Council of Europe mentioned above, said that in Armenia "media are generally free to write what they want and that is what they do without restriction, often on the verge of defamation". The CE representatives stressed that the media can only be truly free when their funding sources do not depend on the state, business circles and other countries. This is something, which unfortunately cannot be seen in Armenia.

We intentionally started the report with assessments of "Freedom House" international organizations. Armenian media were classed as not free and they remained in this category in 2003, as well — due to the lack of solution to the old problems. In this regard the appeals of Yerevan Press Club in the statement passed in 2002 on the World Press Freedom day remain topical: to colleagues — "not to subject the journalistic solidarity to the consideration of the moment of and to unite forces to establish the principles of freedom of information"; to political forces - "to stop using the media as a small change for the solution of the tasks of the day, not to dilute the potential of free press for the sake of narrow group interests"; to President and other administrative structures — "not to divide the media on "ours" and "theirs", have an open dialogue for public accord".

COMPARATIVE ANALYSIS OF VIOLATIONS OF THE RIGHTS OF JOURNALISTS AND MEDIA IN SOUTH CAUCASUS COUNTRIES

The degree of observance of the rights of journalists and media is often called a measure of democracy level in the state and the society. As it is common knowledge, having joined the Council of Europe, Georgia, Armenia and Azerbaijan have assumed a number of commitments, a part of which are focused on media. Yet, if there have been certain positive changes made in the media-related legislation of the three countries, due to bringing the legal and normative base into compliance with international standards, the implementation practice of the commonly accepted rights and freedoms shows a reverse picture.

In this regard the evaluations of international human rights organization "Freedom House" are typical. In its annual survey for 2003 the Georgian media are qualified to be partly free, those of Armenia and Azerbaijan — as not free. Notably, the assessment of Freedom House for 2002 was the same. Yet, in 2001 in the South Caucasus region the Azerbaijani media were recognized to be not free, while Georgian and Armenia were classed as partly free. The negative assessments were primarily pre-conditioned by the presence of political and economic pressure, control and the repressive methods exertion on media.

The results of a study administered in the region by the Committee to Protect Freedom of Expression (Armenia), the Baku Press Club and the Association of the Young Lawyers of Georgia on the violations of the rights of journalists and media since January 2001 (when Armenia and Azerbaijan, following Georgia, became members of the Council of Europe) till January 2004, as well as the comparison of the findings allow to make the following conclusion:

1. In all the three countries of the South Caucasus there is a tendency of general deterioration of the observance of the rights of journalists and media. During the period of interest in Azerbaijan 698 facts of violations of rights of media and their representatives, in Armenia — 67, in Georgia — 53. In each of these countries the biggest pro-

portion of these cases lies with year 2003 — the election period in Armenia and Azerbaijan, as well as of “velvet revolution” in Georgia.

2. Among the violations specified a significant place is taken by facts of physical repression of journalists: in Azerbaijan — 216, in Armenia and Georgia — 14 and 16 respectively. In all the three countries the violence peak was again in 2003. In all the three countries, as a rule, those guilty of the attacks remained unpunished. The only exception for this are the criminal cases on the murders of journalists in Georgia and Armenia — Giorgi Sanaya (July 26, 2002) and Tigran Naghdalian (December 28, 2002). The court proceedings on the case and the punishment of those guilty was due not only to the crimes being unprecedented in both countries and their having much public significance, but also to the fact that the investigation in both Georgia and Armenia was under the close scrutiny of the heads of the states. In Azerbaijan, unlike the two neighbor countries, no murder of journalist has been recorded. However, the quantitative data about the attacks and beatings prove the hard conditions, in which the media representatives perform their professional duties.

3. Apart from the physical violence on the journalists, other forms of pressure on media and their staff have been recorded during the period of interest. In Georgia to exercise certain influence on the media representatives often various threats are used, mostly anonymous, but sometimes — open. Similar cases are recorded in Armenia and Azerbaijan, but in much smaller quantity. The lack of exact statistics on these offences is explained by the fact that journalists often ignore the threats or find a way out of the conflict situation themselves, without making it public or reporting it to law enforcement bodies.

In Georgia, the undetermined circumstances of fires at media offices are noteworthy, especially in the cases when the injured parties considered the incident an arson, as well as such facts as poisoning of the whole editorial office by unknown gas, shootings at “Rustavi-2” TV companies, robberies and spoilage of the editorial property of a number of media. At the same time the public did qualify each of these cases as a method for of exerting pressure on media.

As to the spoilage of property of journalists and media, those guilty have not been found or duly punished in Armenia and Azerbaijan as well. Yet, it is more common for these two countries as opposed to Georgia to apply political and legal mechanisms of media repression.

In particular, the loss of air by “A1+” and “Noyan Tapan” TV companies is viewed by the local public and international organizations as an implementation of a political order “from above”. In Azerbaijan the suits filed by the representatives of authorities versus media that result in suspension of media and journalist activities are also a proof of a sue of political and legal mechanisms of exercising pressure on media. The usually used in the countries subpoenas for journalists to law enforcement bodies, including the prosecutor’s offices, for testimony on the publications, the media audits by the fiscal services are, according to independent experts, were aimed at influencing the media in a certain manner.

4. In all the three countries of South Caucasus there is trend for increase in the number of litigation's against media and journalists in 2003 as compared with 2002, although the most prominent year for Azerbaijan in this regard was 2001 — 48 cases. Overall, during the period in question in the country there have been 126 suits versus media, their heads and employees filed, which significantly outnumber the similar indicator in Georgia (12) and Armenia (8).

The litigations mostly concerned with the protection of honor, dignity and business reputation. Unlike Armenia, in Azerbaijan and Georgia, among these cases the share of suits filed by the representatives of the authority, officials and their surroundings is big. The pretexts for these proceedings are usually the critical pieces in media, while the true reasons are the intolerance to such publications, aspiration to exert pressure on media. Under the circumstances where the courts give more protection to officials as compared to ordinary citizens, journalists from the very start find themselves in a vulnerable situation and plead guilty of having insulted the honor and dignity of the plaintiff, however objective the criticism is.

In Georgia to a less extent, and in Azerbaijan much more actively fines on media are applied. Yet, while in Georgia the amounts defined by the court to compensate the moral damage are seldom as high as to endanger the existence of the medium, in Azerbaijan these sanction often become a huge burden on the editions, as a result of which the medium can stop its existence. In Armenia during the period of study no fines were imposed on media. It should also be noted here that the compensation of moral damage is not provided for by the local legislation.

5. In the countries of South Caucasus the problem of decriminalization of libel and insult in media is an important issue. This has not happen to this day, and anyone, particularly, an official, is still able to interpret criticism as libel or insult and demand that the author of the publication be punished by an appropriate article of the Criminal Code. Thus in Azerbaijan, during the period of interest, these provisions of the Criminal Code were quite actively used by the law enforcement bodies and the courts. In 2001 here criminal proceedings were instituted here versus 10 journalists, in 2003 — 8, mostly on libel and insult charges. Moreover, in some of the cases punishment were defined as imprisonment, reformatory labor, etc.

In Armenia, during this period only one attempt has been made (in 2002, the "Case of Imbeciles") to institute criminal proceedings for insult, but the case was dismissed by the prosecutor's office and did not get to court. There have been no cases of this kind in Georgia. However, there are no guarantees that in these countries as well, where democracy is at the development stage, under certain circumstances the Articles of Criminal Code on libel and insult will not be used to exert pressure on journalists and media.

6. In the course of 2001-2003 the biggest number of violations of a right to receive and impart information is recorded in Azerbaijan — 108. In Armenia there have been 17 such cases recorded, in Georgia — 1. Authors of reports for each of the country note that the data presented here may be incomplete as journalists often think its unnecessary to notify the public about their problems of access to information, attempt to find alternative sources, are very seldom filing suit with the courts against the officials and organizations that have refused to provide information without sufficient grounds.

Yet the analysis made allows to state that in all the three countries of South Caucasus (to a greater extent in Azerbaijan and Armenia, to a lesser — in Georgia) there is a problem of subdividing the media into "ours" and "theirs", and, respectively, in selective approach when providing information. This takes place both within the government and within the opposition. A number of state structures, primarily, the law enforcement bodies, remain, in essence closed for media and they decide for themselves which information is to be published and which is not. At the same time, the precedents in Armenia and Georgia when journalists by litigation got the appropriate agencies

to provide the information requested allow to hope that on the one hand the media will further be more active in defending their right to information and on the other — the officials will be more responsible in following the domestic legislation in the sphere as well as the commonly accepted international norms.

The numerous facts of confiscation or obstruction the dissemination of print media in Azerbaijan recorded in this category, the few but nonetheless outrageous cases of mysterious disappearance of the print runs of the ordinary issues of newspapers ("Aravot", "Hayastani Communist") in Armenia also signify the existence of serious threats to the freedom of expression in these countries.

7. The waves of physical violence, other methods of repression of media and their representatives, restrictions of a right to receive and impart information are particularly intensified in the countries of South Caucasus along with the activation of political situation, also due to election campaigns. Beatings of journalists covering the crowded rallies and demonstrations, confiscation of photo and video cameras, spoiling the recorded materials, or, which is even worse, breaking the expensive professional equipment — all this has become a common occurrence that accompanies the heat of political passions in Azerbaijan, Armenia and Georgia. The main characters in these incidents are the representatives of law enforcement bodies who have a very peculiar interpretation to their function of enduring public order and use force against the media representative at duty. Another notable practice is the illegal detainment of journalists and taking them to police stations.

As to the facts of direct political repression and interference with media activities, during the period of election campaigns become particularly unscrupulous — removal of unwanted programs from air, inducing journalists to take a leave, etc. — confirm the existence of control on media.

As the analysis shows, the inadequate attitude to criticism, intolerance for alternative opinions, attitudes and those who express it, are generally characteristic for the countries of South Caucasus, although to varying extents. The intensification of these trends is pre-conditioned by the atmosphere of political and public life itself, the dependence of the majority of media, the selective law application

practice and sometimes complete neglecting of the law when solving disputable issues related to media activities. Certainly, it is only in the case of activation of democratic reforms in Azerbaijan, Armenia and Georgia, establishment of favorable conditions for the development of the "fourth estate" as an important institute of civil society that one can hope for positive changes in the sphere of protection of rights of journalists and media.

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