

Statement Regarding the Draft Law “On Introducing Amendments and Additions into the RA Law ‘On Television and Radio’”

September 26, 2006

On September 25, 2006 a package of draft laws was submitted to the RA National Assembly. The package contains draft laws dealing with broadcasting, including the Draft Law “On Introducing Amendments and Additions to the RA Law ‘On Television and Radio’”.

We, the representatives of journalistic associations, are concerned with the following:

1. The Draft has been introduced into circulation in a rush, without consultations with parties concerned – representatives of TV and radio companies and non-governmental organizations.
2. The adoption of the Draft is motivated by the Resolution of the RA Government, dated December 9, 2005. No other grounds are quoted for the content of the amendments, and in essence, only Article 21 of the Draft can be justified by the demand of Article 83.2 of the RA Constitution.
3. The Draft Law contains a number of disputable provisions that give rise to serious concerns in terms of freedom of expression, and fair and objective regulation of the broadcasting market.

In particular:

a) The mechanism, proposed for the regulation of the National Commission on Television and Radio, in our opinion, does not solve the repeatedly raised problem – that of the NCTR independence. We are positive that the mechanism proposed cannot be considered the best possible option for the enactment of constitutional amendments. The content of Article 21 of the Draft does not correspond to the provision of Article 83.2 of the Constitution: until there is no specification of the timeframes for the NCTR member replacement as well as the enactment deadline of this constitutional provision, the members of the NCTR, appointed by the RA President, retain the dominant position. Hence an attempt is made to delay the enactment of the constitutional demand. Taking into account that the current NCTR members were appointed by the RA President, we propose that NCTR be expanded to 16 members, with 8 of them elected by the National Assembly. This would ultimately ensure the provision for “50/50” appointment/election scheme, without violating Clause 11 of Article 117 of the RA Constitution, saying: “The incumbent members shall continue to remain in office until the expiry of their term of office determined by the ‘Law on TV and Radio’.” This will at the same time set conditions for the balanced operation of the NCTR.

b) Clause (c) of Article 16 of the Draft that abolishes Article 28 of the Broadcast Law, in particular, the 5% limit of the commercial advertising in the total broadcast volume as well as the ban on commercial advertising interruption of the programs aired by Public TV and Radio Company, in our opinion, increasingly commercializes the PTRC.

c) Part 2 of Article 25 of the Draft, according to which the National Commission on Television and Radio, in case of a necessity, announces a broadcast licensing competition for vacant (unoccupied) frequencies, as

we believe, expands the functions of the National Commission, which can result in unpredictable consequences. How will the necessity be decided, and will it not become means for restricting the market?

d) Part 1 of Article 28 of the Draft Law, in our opinion, runs contrary to the demands of the Law in force (Article 50) and the Draft itself (Article 27). The latter one records the obligation of the NCTR to “duly justify the resolutions on the selection of the license holder, the refusal of a license and the invalidation of the license”. In other words, the mere acknowledgement of a defeat cannot be considered due justification. It is for this very reason that we think the due justification must contain specific reasons (licensing criteria) and/or the deficiencies of the bid.

4. The Draft Law does not take into account the demands of Recommendation (96)10/11 September 1996 on the guarantee of the independence of public service broadcasting and Recommendation (2000)23/20 December 2000 on the independence and functions of regulatory authorities for the broadcasting sector, made by the Council of Europe Committee of Ministers, in particular the demand for independence of regulatory bodies and their isolation from political influences. We also think it characteristic that Article 31 of the Draft that refers to the application of administrative penalties runs contrary to Clause 23 of the Recommendation (2000)23 above, according to which “a range of sanctions which have to be prescribed by law should be available, starting with a warning”. The Draft does not specify the “warning” as an obligatory initial penalty.

The Draft does not cover the comments, made by the OSCE Representative on Freedom of the Media Miklos Haraszti in his report on the state of media freedom in Armenia of July 26, 2006, either. This refers in particular, to the following comment: “As a first step to improve the state of broadcasting it is recommended that legislative changes provided for by the Constitutional amendment should be prepared by the Government, discussed in a public forum with members of civil society, and passed in Parliament as soon as possible, certainly before the Parliamentary elections in 2007. However, legislative changes should not be limited to a ‘half Presidential – half Parliamentary’ board. The composition of all boards should represent the political and social diversity of the country, and should include NGOs and professional associations.”

We, the representatives of journalistic associations, appeal that the RA National Assembly, prior to discussing and adopting the package of draft laws on broadcasting as submitted by the Government, hold public forums, during which we are ready to present our observations and proposals regarding the content of the amendments.

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