

Statement Regarding the Package of Draft Amendments to Broadcast Legislation

April 9, 2009

The agenda of the RA National Assembly includes the second hearing of the package of draft amendments to the RA Laws “On Television and Radio”, “Regulations of the National Commission on Television and Radio”, “Regulations of the RA National Assembly”, “On State Duty”. Despite the few improvements against the previous version of the package strongly criticized by our organizations in the statement of February 3, 2009, the document, as we see it, remains far from the demands of the time.

Any legislative initiative on television and radio must today be assessed from the perspective of solving the four cornerstone problems of the Armenian broadcast sphere:

- ensuring the independence of the National Commission on Television and Radio – the body that regulates the activities of TV and radio companies;
- real reformation of the Public TV and Radio Company, inclusion of PTRC in the field of legal regulation, creation of mechanisms of its responsibility and accountability to the society;
- formation of new legal conditions of impartial and transparent broadcast licensing competitions;
- revocation of the ban on allocation of frequencies.

The legislative changes that do not entail basic solutions to the problems above can be only seen as cosmetic. In this regard the improvement of certain provisions of the draft law package on broadcasting, proposed for the second hearing by the RA National Assembly, are nothing but a reform imitation and do not in any way contribute to overcoming the total control of the authorities over the TV and radio air in Armenia.

As a main argument to support the package its authors refer to the positive assessment of the Council of Europe expert. Meanwhile, the CE assessment, while phrased in a very polite and cautious manner, contains criticism of a number of important clauses of the drafts. In particular, this document clearly states the absence of due guarantees to the independence of the National Commission on Television and Radio and the Council of Public TV and Radio Company, as well as about the incompliance of the PTRC structure to the internationally accepted standards of good governance.

Even if one shares the satisfaction of the CE expert with most of the remaining provisions of the package, the two mentioned shortcomings, referring to the cornerstone issues of the broadcasting legislation, render the voting of the RA NA deputies for the package questionable. What is the value of amendments to the RA Law “On Television and Radio”, if they do not call for a basic review of the mechanisms permanently criticized over the past 12 years, ever since the debate of the broadcast legislation started?

It is quite surprising that the Council of Europe expert, assessing the package of the draft law on regulating the broadcasting, overlooked the recommendations of the Resolutions of the Parliamentary Assembly of the Council of Europe 1532 (2007), 1609 (2008), 1620 (2008) and 1643 (2009). Addressing the issues of Armenia’s compliance with its commitments to the Council of Europe and functioning of democratic

institutions in the country, these Resolutions, proceeding from the political situation in the country, define the agenda of reforms, also with regard to media. The recommendations raise the issues of independence of the regulatory body, the transparency of broadcast licensing competitions, and the possibility of “A1+” TV company taking part in them, the ban on frequency allocation. Considering the draft package without taking into account the four most recent PACE recommendations on Armenia, the Council of Europe expert, on the one hand, actually overlooked some questionable provisions of the legislation in force (first of all, the ban on frequency allocation), and on the other – assessed a whole number of legislative innovations without taking into account the problematic practices of late (transparency and impartiality of broadcast licensing competitions).

The expert welcomes the expansion of Article 50 of the RA Law “On Television and Radio” that call for the provision of “full reasons” to the applicants that were refused a license. A reference is made here to the judgment of the European Court of Human Rights of June 17, 2008 on the case of “A1+” TV company founder, “Meltex” LLC. Yet, in essence, the new draft law proposes nothing new with regard to justification of license refusal, the mechanisms of defining criteria that NCTR members should be guided with during the assessment of the applications are still not prescribed.

One could have quoted a number of other examples of the insufficiently thorough analysis of the draft law package by CE expert. Yet the problem lies not with the particularities, but with the technique that the media legislation is being shaped with in Armenia. Despite the fact that a working group of local experts is set up adjacently to the specialized standing committee of the National Assembly, the recent drafts have not been discussed with this working group. The international experts meet and discuss drafts only with their authors or MPs interested in the draft promotion. Objections, comments, clarifications as to the problems of practical applications of certain clauses that the representatives of Armenian media community could share, public debate – all this is of no interest to any one for a long time already. Such closed process of legislation formation cannot yield other results than the ones we have today.

Meanwhile, when the authorities are interested to promote certain initiative, even if extremely unprofessional in its development, it is immediately in the limelight of attention, debate is raised about it on all TV channels. A vivid example of this is the draft law on introducing new provisions to the Civil Code, stipulating moral damage compensation that has made so much noise lately. The vehement endorsement of this initiative can be hardly regarded as anything other than an attempt to divert the public attention from real problems in media, obstruction of efforts of journalistic organizations in legislation and media self-regulation.

Unfortunately, such red herrings have been used more than once and run contrary to the policy of strengthening civil society as declared by the RA authorities.

Proceeding from this, we call on the RA National Assembly:

1. To revoke from circulation the package of draft laws on broadcasting and to come back to it after thorough review and improvement in accordance with the international commitments of Armenia and the suggestions of the working group at the RA National Assembly Standing Committee on Science, Education, Culture, Youth and Sport Issues. Otherwise we see no point in further participation in the working group and shall call back our representatives from it;

2. To immediately include a draft law on abolishing the ban on holding broadcast licensing competitions in the agenda of the National Assembly. To refuse from the idea of digitalization at the expense of free competition and media plurality. To hold open debate of the TV and radio broadcast digitalization program;

3. To delay the initiatives related to new forms of journalistic liability for defamation until the completion of processes aimed at improving the broadcast legislation, guaranteeing true public service broadcasting, pluralistic private TV and radio, media accountability system formation. The attempts of prioritizing the issue of legal liability of journalists damaging the development of civilized media market will be viewed by us to be directed at the restriction of free expression in Armenia.

Yerevan Press Club

“Internews” Media Support NGO

Media Diversity Institute-Armenia

Committee to Protect Freedom of Expression

“Asparez” Journalist’s Club

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